Supreme Court of the United States

OCTOBER TERM, 1970

No. 5586

PAUL J. BELL, JR.,

Petitioner,

—v.—

R. H. BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

INDEX

Docket Entries of the Courts Below

A. In The Bureau of Safety Responsibility, Revocation and Suspension Unit:

1. Undated Accident Report

2. Letter to Department of Public Safety, Bureau of Safety Responsibility, from Attorney Jim T. Bennett, Jr. on behalf of Sherry Sirmans, the injured minor, dated February 1, 1969

3. Affidavit of attending physician, Form SR-57A, dated February 28, 1969

4. Affidavit of Leon Capes on behalf of the injured minor alleging personal injury, Form SR-57, dated March 24, 1969

5. Letter from Department of Public Safety, Bureau of Safety Responsibility addressed to Paul J. Bell, Jr., requesting accident report, Form SR-50, dated April 10, 1969

6. Order of Suspension, Form SR-8, dated April 10, 1969

7. Letter from Attorney Hugh D. Wright to Georgia Department of Public Safety, Bureau of Safety Responsibility, requesting hearing and stay of suspension undated

8. Order for Hearing on Suspension, Form SR-9, dated April 28, 1969

9. Decision of Hearing dated May 8, 1969.

B. In The Superior Court of Cook County, Georgia; Case No. 477:

1. Petition of Paul J. Bell, Jr. for Return of License and License Plates filed May 8, 1969

2. Order of Judge H. W. Lott setting appeal of Paul J. Bell, Jr. for hearing on May 22, 1969 filed May 8, 1969

3. Finding of Fact of Judge H. W. Lott dated August 1, 1969 and filed August 20, 1969

DOCKET ENTRIES OF THE COURTS BELOW

4. Agreement of parties stipulating facts developed at trial, filed August 29, 1969

5. Notice of Appeal from the decision of the Cook County Superior Court to the Georgia Court of Appeals and Certificate of Service filed September 12, 1969.

C. In The Court of Appeals For the State of Georgia; Case No. 44887:

1. Enumeration of Errors and Statement of Jurisdiction with Certificate of Service filed October 3, 1969

2. Brief of Appellant and Certificate of Service filed October 3, 1969

3. Brief of Appellee and Certificate of Service filed October 31, 1969

4. Decision of the Court of Appeals filed March 4, 1970

5. Motion of Appellee for Rehearing and Certificate of Service, filed March 11, 1970

6. Order denying Motion for Rehearing filed March 17, 1970

7. Notice of Intent to Apply to the Supreme Court of Georgia for Writ of Certiorari and Certificate of Service filed March 23, 1970

8. Order denying application for certiorari by the Supreme Court of Georgia filed May 26, 1970 and dated April 23, 1970

9. Application for Stay of Remittitur Pending Petition to the Supreme Court of the United States for Writ of Certiorari and Certificate of Service filed May 26, 1970

10. Order staying remittitur filed May 26, 1970

D. In The Supreme Court of Georgia; Case No. 25856:

1. Petition for Writ of Certiorari to the Court of Appeals filed April 15, 1970

GEORGIA-FULTON COUNTY
I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

DATE: 5-16-69 D. S. Harris
Bureau of Safety Responsibility

11/24/68

Law Offices

BENNETT AND MOON
P. O. Box 1211
Valdosta, Georgia 31601

Jim T. Bennett, Jr.
Floyd Banks Moon

Telephone 242-6726 (Area 912)
118 West Hill Avenue

February 1, 1969

Capt. Harris 57 A
ago

Department of Public Safety
P. O. Box 1456
Atlanta, Georgia 30301

Attention: Col. R. H. Burson

RE: Sherry Sirmans, minor daughter
of Melba Sirmans Capes

Dear Col. Burson:

Transmitted herewith is copy of accident report to furnish pertinent information.

We represent Leon and Melba Capes of Box 46, Sparks, Georgia, whose minor daughter, Sherry Sirmans, was injured in an automobile-bicycle accident as a result of the negligence of Paul T. Bell, Jr., Sparks, Georgia. Sherry suffered a broken leg as well as multiple bruises and lacerations, and Rev. Bell has made no effort to settle this matter. We would like to file the necessary forms to have his tag and driver's license taken unless he makes some arrangements to pay the damages.

Your early attention to this matter will be appreciated.

Very truly yours,

BENNETT & MOON

By: Jim T. Bennett, Jr.
JIM T. BENNETT, JR.

JTBjr/pva

BENNETT AND MOON
P. O. Box 1211
Valdosta, Georgia 31601

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February 1, 1969

Capt. Harris 57A
c20

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Your early attention to this matter will be appreciated.

Very truly yours,

BENNETT & MOON

By: Jim T. Bennett, Jr.
JIM T. BENNETT, JR.

JTBjr/pva

Enclosure

I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

DATE: 5-16-69 [signature]

Bureau of Safety Responsibility

The D... ...nt of Public Safety, P. O. Box 1456, Atlanta 1, Georgia.

TIME — Date of Accident: 11-24-68 Day of Week: Sunday Hour: 3:10 A.M. / P.M.

POST ACCT. NO.

DO NOT WRITE IN THIS SPACE: No. ___ Station ___ OP lat. ___ Fat. rec. ___ Tpr. ___ L.P. ___ Sh. ___ Cor. ___ Name cd. ___ Coded ___ Type ___ Fat. ___ P.I. ___ P.D. ___ Spotted ___

LOCATION

AREA ACCIDENT OCCURRED IN: County: Cook City, town or township: SPARKS

If accident occurred in rural area indicate distance from nearest town. Use two distances and two directions if necessary.
.4 miles north / ___ miles south / ___ miles east / ___ miles west of ☐ limits of ☑ center of Sparks (Town or Village)

ROAD ACCIDENT OCCURRED ON: College St (Give name of street or highway number (U. S. or State). If no highway, identify by name.)

Check and complete one:
☑ AT ITS INTERSECTION WITH Lovette St. (Name of intersecting street or highway number)
OR IF
☐ NOT AT INTERSECTION: ___ feet north of / ___ feet south / ___ feet east / ___ feet west

Show nearest intersecting street or highway, house number, curve bridge, railroad crossing, alley, driveway, culvert, milepost, underpass, or other identifying landmark. Show exact distance, using two directions and two distances if necessary.

ROAD

CHARACTER (Check two): ☑ Straight road ☐ Curve ☑ Level ☐ On grade ☐ Hillcrest

SURFACE (Check one): ☐ Concrete ☑ Blacktop ☐ Brick ☐ Gravel ☐ Dirt ☐ Specify other

SURFACE CONDITION (Check one): ☑ Dry ☐ Wet ☐ Muddy ☐ Snowy ☐ Icy

DEFECTS (Check one or more): ☐ Defective shoulders ☐ Holes, deep ruts, bumps ☐ Loose material on surface ☐ Road under construction ☐ Specify other ☑ No defects

TRAFFIC CONTROL (Check one or more): ☐ Officer or watchman ☐ Stop-and-go or flashing light ☐ Stop sign ☐ Warning sign ☐ Railroad crossing gates ☐ Railroad automatic signal ☐ One-way street ☐ Traffic lanes painted or marked ☐ Opposing traffic lanes separated by what ___ ☐ Specify other ☐ Above control not functioning ☐ No traffic control present

KIND OF LOCALITY (Check one to show that the area adjacent to the street or highway within 300 feet was primarily): ☐ Manufacturing or industrial ☑ Shopping or business ☐ Residential district ☐ School or playground ☐ Open country ☐ Specify other

LIGHT (Check one): ☑ Daylight ☐ Dusk ☐ Dawn ☐ Darkness—street lighted ☐ Darkness—street not lighted

WEATHER (Check one): ☐ Clear ☑ Cloudy ☐ Raining ☐ Snowing ☐ Fog ☐ Specify other

VEHICLES

VEHICLE No. 1: 1965 (Year) Falcon (Make) Wagon (Type) Vehicle License Plate: 1968 (Year) GA (State) 81-D-457 (Number) ICC Plate No. ___ Georgia PSC No. ___

DRIVER: Paul T. Bell Jr. (Name) PO Box 8 (Street or R.F.D.) Sparks (City and State) Age 30 Sex M Race W

Driver's Occupation: PREACHER Driving Experience: 14 Years Driver's License: GA (State) 0-45639 (Number) ☐ Chauffeur ☐ Operator ☐ Beginner Speed before accident: 25 miles per hour Speed limit: 35 miles per hour Maximum safe speed: 35 miles per hour

OWNER: Same

PARTS OF VEHICLE DAMAGED: Left FRONT GRILL Approximate cost to repair vehicle $ 15.00

NAME OF LIABILITY INSURANCE COMPANY: NONE Policy No. ___ Type ___

VEH. REMOVED TO: DRIVER DRIVEABLE YES ☑ NO ☐

VEHICLE No. 2: ___ (For other vehicles use another form) Year ___ Make ___ Type (sedan, truck, taxi, bus, etc.) ___ Vehicle License Plate ___ Year ___ State ___ Number ___ ICC Plate No. ___ Georgia PSC No. ___

DRIVER ___ Name ___ Street or R.F.D. ___ City and State ___ Age ___ Sex ___ Race ___

Driver's Occupation ___ Driving Experience ___ Years Driver's License ___ State ___ Number ___ ☐ Chauffeur ☐ Operator ☐ Beginner Speed before accident ___ Speed limit ___ Maximum safe speed ___

OWNER ___ (Total vehicles involved) Street or R.F.D. ___ City and State ___

PARTS OF VEHICLE DAMAGED ___ Approximate cost to repair vehicle $ ___

NAME OF LIABILITY INSURANCE COMPANY ___ Policy No. ___ Type ___

OVERSIZE PAGE – SEE NEXT FRAME FOR REMAINDER OF PAGE

LOCATION

_____ miles west _____ Town or Village

ROAD ACCIDENT OCCURRED ON: College St
Give name of street or highway number (U. S. or State). If no highway, identify by name.

Check and complete one: ☑ AT ITS INTERSECTION WITH Lovette St
Name of intersecting street or highway number
OR IF ☐ NOT AT INTERSECTION: _____ feet north of _____
_____ feet south
_____ feet east
_____ feet west
Show nearest intersecting street or highway, house number, curve bridge, railroad crossing, alley, driveway, culvert, milepost, underpass, or other identifying landmark. Show exact distance, using two directions and two distances if necessary.

Fat. acc. _____
Tpr. _ I.P. _ Sh. _ Cor. _
Name ed. _____
Coded _____
Type _____
Fat. P.I. P.D.
Spotted _____

ROAD

CHARACTER (Check ones)
☑ Straight road
☐ Curve
☑ Level
☐ On grade
☐ Hillcrest

SURFACE CONDITION (Check one)
☑ Dry
☐ Wet
☐ Muddy
☐ Snowy
☐ Icy

SURFACE (Check one)
☐ Concrete
☑ Blacktop
☐ Brick
☐ Gravel
☐ Dirt
☐ _____ Specify other

DEFECTS (Check one or more)
☐ Defective shoulders
☐ Holes, deep ruts, bumps
☐ Loose material on surface
☐ Road under construction
☐ _____ Specify other
☑ No defects

TRAFFIC CONTROL (Check one or more)
☐ Officer or watchman
☐ Stop-and-go or flashing light
☐ Stop sign
☐ Warning sign
☐ Railroad crossing gates
☐ Railroad automatic signal
☐ One-way street
☑ Traffic lanes painted or marked
☐ Opposing traffic lanes separated by what _____
☐ _____ Specify other
☐ Above control not functioning
☐ No traffic control present

KIND OF LOCALITY Check one to show that the area adjacent to the street or highway within 300 feet was primarily:
☐ Manufacturing or industrial
☑ Shopping or business
☐ Residential district
☐ School or playground
☐ Open country
☐ _____ Specify other

LIGHT (Check one)
☑ Daylight
☐ Dusk
☐ Dawn
☐ Darkness—street lighted
☐ Darkness—street not lighted

WEATHER (Check one)
☐ Clear
☑ Cloudy
☐ Raining
☐ Snowing
☐ Fog
☐ _____ Specify other

VEHICLES

VEHICLE No. 1: 1965 Arleon Warren — Year Make Type (sedan, truck, taxi, bus, etc.)
Vehicle License Plate 1968 GA 81-D-457 — Year State Number
ICC Plate No. _____ Georgia PSC No. _____

DRIVER Paul J. Bell Jr. PO Box 8 Sparta — Name Street or R.F.D. City and State
Age 30 Sex M Race W — White, negro, etc.
Driver's Occupation Prencher — Carpenter, sales clerk, etc.
Driving Experience 14 Years
Driver's License GA 0-45639 — State Number
☐ Chauffeur ☐ Operator ☐ Beginner
Speed before accident _____ miles per hour
Speed limit 35 miles per hour
Maximum safe speed 35 miles per hour

OWNER Same — Name Street or R.F.D. City and State
PARTS OF VEHICLE DAMAGED Left FRONT GRILL
Approximate cost to repair vehicle $ 15.00
NAME OF LIABILITY INSURANCE COMPANY NONE — Policy No. _____ Type _____
VEH. REMOVED TO: DRIVER — DRIVEABLE YES ☑ NO ☐

For other vehicles use another form

VEHICLE No. 2: _____ — Year Make Type (sedan, truck, taxi, bus, etc.)
Vehicle License Plate _____ — Year State Number
ICC Plate No. _____ Georgia PSC No. _____

DRIVER _____ — Name Street or R.F.D. City and State
Age _____ Sex _____ Race _____ — White, negro, etc.
Driver's Occupation _____ — Carpenter, sales clerk, etc.
Driving Experience _____ Years
Driver's License _____ — State Number
☐ Chauffeur ☐ Operator ☐ Beginner
Speed before accident _____ miles per hour
Speed limit _____ miles per hour
Maximum safe speed _____ miles per hour

Total vehicles involved

OWNER _____ — Name Street or R.F.D. City and State
PARTS OF VEHICLE DAMAGED _____
Approximate cost to repair vehicle $ _____
NAME OF LIABILITY INSURANCE COMPANY _____ Policy No. _____ Type _____
VEH. REMOVED TO: _____ DRIVEABLE YES ☐ NO ☐

DAMAGE TO PROPERTY OTHER THAN VEHICLES _____
Name objects, show ownership, and state nature of damage
Approximate cost to repair $ _____

INJURED

Fatally injured No. _____
Name SHERRY Capes Address PO Box 46 Sparta
Age 5 Sex F Race W Nature and extent of injuries LACERATION Head & Leg Bruises (Right)
Was person killed? _____
Hospital _____
☐ Driver ☐ Passenger ☐ Pedestrian ☑ BICYCLE ☐ _____ Specify other — in vehicle No. _____

Non-Fatally injured No. _____
Name _____ Address _____
Age _____ Sex _____ Race _____ Nature and extent of injuries _____
Was person killed? _____
Hospital _____
☐ Driver ☐ Passenger ☐ Pedestrian ☐ _____ Specify other — in vehicle No. _____

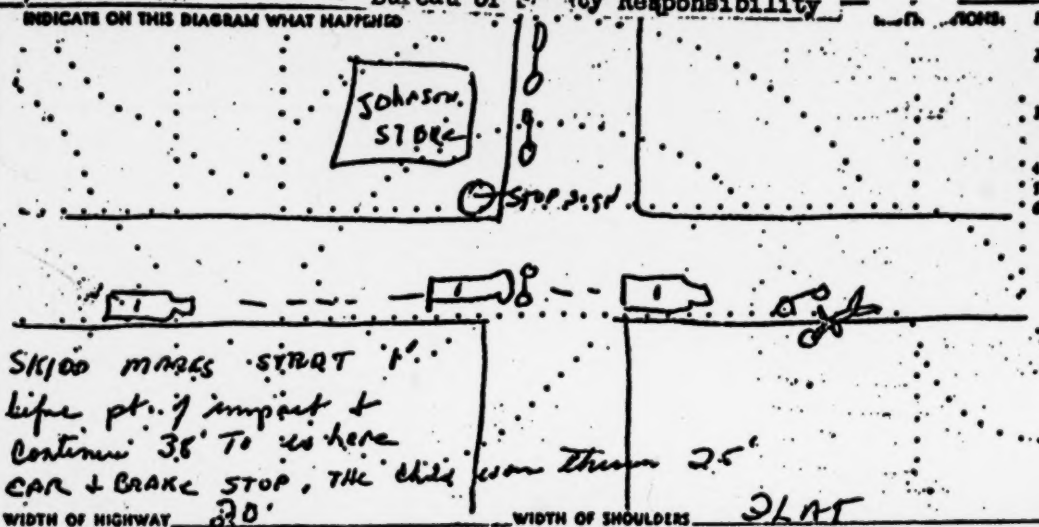
WITNESSES: IF MORE THAN ONE WITNESS, USE ADDITIONAL SHEET
Where was witness? (ie veh. 1, pedestrian 40 feet east, etc.)
Name _____ Address _____

Form A.R.D. 813 Revised 1-19-65 Auth. Tpr. #2

I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

DATE: 5-16-69 _____ Bureau of Safety Responsibility

INDICATE ON THIS DIAGRAM WHAT HAPPENED



NOTE:
1. Follow dotted lines to draw outline of roadway at place of accident.
2. Number each vehicle and show direction of travel by arrow.
3. Use solid line to show path before accident ——; dotted line after accident - - - -
4. Show pedestrian by: ——o
5. Show railroad by: ----------
6. Show distance and direction to landmarks; identify landmarks by name or number.

INDICATE NORTH BY ARROW

WHAT DRIVERS WERE DOING (Check one for each driver)

Driver 1	2	3	
☐	☐	☐	Going straight ahead
☐	☐	☐	Making right turn
☐	☐	☐	Making left turn
☐	☐	☐	Making U turn
☐	☐	☐	Slowing or stopping
☐	☐	☐	Starting in traffic lane
☐	☐	☐	Starting from parked position
☐	☐	☐	Stopped in traffic lane
☐	☐	☐	Parked
☐	☐	☐	Backing

(Check applicable items)

- ☐ Passing
- ☐ Avoiding vehicle, object, or pedestrian
- ☐ Skidded before applying brakes
- ☐ Skidded after applying brakes
- ☐ Hit and run
- ☐ Driverless moving vehicle

DRIVERS' VIOLATION INDICATED (Check one or more for each driver)

Driver 1	2	3	
☐	☐	☐	Exceeded lawful speed
☐	☐	☐	Too fast for conditions
☐	☐	☐	Did not grant right of way to vehicle
☐	☐	☐	Did not grant right of way to pedestrian
☐	☐	☐	Followed too closely
☐	☐	☐	Drove through safety zone
☐	☐	☐	Passed on hill with ins. clear.
☐	☐	☐	Passed on curve with ins. clear.
☐	☐	☐	Cut in after passing
☐	☐	☐	Other improper passing
☐	☐	☐	On wrong side of road not in passing
☐	☐	☐	Failed to signal or gave improper signal
☐	☐	☐	Improper turn—wide right turn
☐	☐	☐	Improper turn—left corner on left turn
☐	☐	☐	Improper turn—from wrong lane
☐	☐	☐	Other improper turning
☐	☐	☐	Disregarded police officer
☐	☐	☐	Disregarded stop-and-go light
☐	☐	☐	Disregarded flashing light
☐	☒	☐	Disregarded stop sign
☐	☐	☐	Disregarded warning sign
☐	☐	☐	Improper starting from parked position
☐	☐	☐	Improper parking location
☐	☐	☐	Driving while intoxicated
☐	☐	☐	Other improper actions (explain):
☐	☐	☐	_____
☐	☐	☐	_____
☐	☐	☐	_____
☐	☐	☐	No improper driving

WHAT PEDESTRIAN WAS DOING (Check one)

- ☐ Crossing at intersection—with signal
- ☐ Crossing at intersection—against signal
- ☐ Crossing at intersection—no signal
- ☐ Crossing at intersection—diagonally
- ☐ Crossing not at intersection
- ☐ Coming from behind parked cars
- ☐ Walking in roadway—(Check two below)
  - ☐ With traffic
  - ☐ Against traffic
  - ☐ Sidewalks available
  - ☐ Sidewalks not available
- ☐ Pushing [illegible] on vehicle
- ☐ Other w[illegible] roadway
- ☐ Playing on roadway
- ☐ Hitching on vehicle
- ☐ Not on roadway (Explain) _____

☐ _____ Specify other action

Occupation _____

CONDITION OF DRIVERS AND PEDESTRIAN (Check one or more)

Driver 1	2	3	Ped.	
☐	☐	☐	☐	Ill
☐	☐	☐	☐	Fatigued
☐	☐	☐	☐	Apparently asleep
☐	☐	☐	☐	Body defect (arms, eyesight, paralysis, etc.)
☑	☐	☐	☐	No apparent defects
☐	☐	☐	☐	Defects not known

Driver 1	2	3	Ped.	
☐	☐	☐	☐	Had NOT been drinking
☐	☐	☐	☐	Not known if drinking
				HAD BEEN DRINKING. IF SO:
☐	☐	☐	☐	Obviously drunk
☐	☐	☐	☐	Ability impaired
☐	☐	☐	☐	Ability not impaired
☐	☐	☐	☐	Not known if impaired

Explain condition _____

VEHICLE CONDITION (Check one or more)

Vehicle 1	2	3	
☐	☐	☐	Defective brakes
☐	☐	☐	Improper lights
☐	☐	☐	Defective steering mechanism
☐	☐	☐	Defective tires
☐	☐	☐	Other defects
☐	☐	☐	No defects
☐	☐	☐	Defects not known
☐	☐	☐	Chains in use
☐	☐	☐	Equipped with seat belts
☐	☐	☐	Seat belts in use

DRIVER VISION OBSCURED (Check one or more in each section)

- ☐ Rain, snow, etc., on windshield
- ☐ Windshield otherwise obscured
- ☐ Vision obscured by load on vehicle
- ☐ _____ Specify other
- ☐ Vision not obscured

- ☐ Trees, crops, etc.
- ☐ Building
- ☐ Embankment
- ☐ Signboard
- ☐ Hillcrest
- ☐ Parked vehicles
- ☐ Moving vehicles
- ☐ _____ (Specify other)
- ☐ Not obscured

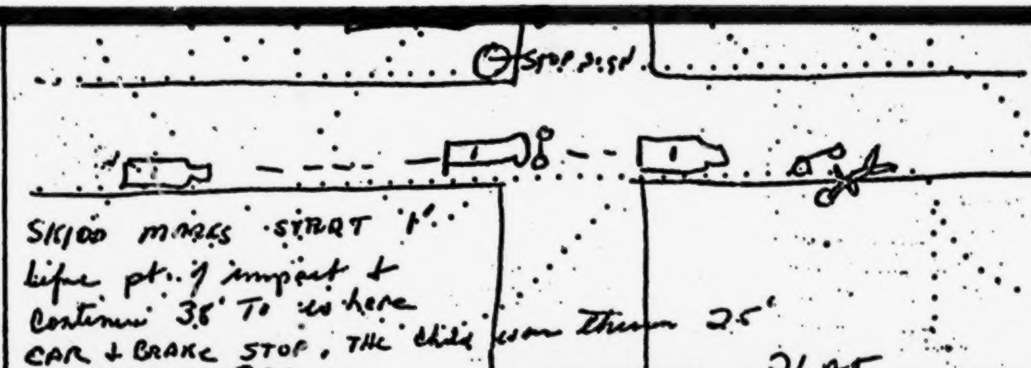
DESCRIBE WHAT HAPPENED (Refer to vehicles by number)

Use this space for listing additional witnesses and injured persons. Also explain questions not fully answered by checking in the boxes provided. If more space is needed use another

Car 1 was traveling South on College St. at Approximately 25 MPH when it reached Juniper St. a Person Cleon was riding Bike Westerly on Juniper St on a Bike & Rode into path of Car 1 [illegible]

OVERSIZE PAGE – SEE NEXT FRAME FOR REMAINDER OF PAGE

5. Show railroad by: ———
6. Show distance and direction to landmarks; identify landmarks by name or number.



WIDTH OF HIGHWAY 20' WIDTH OF SHOULDERS FLAT

WHAT DRIVERS WERE DOING (Check one for each driver)
Driver 1 2 3
☐☐☐ Going straight ahead
☐☐☐ Making right turn
☐☐☐ Making left turn
☐☐☐ Making U turn
☐☐☐ Slowing or stopping
☐☐☐ Starting in traffic lane
☐☐☐ Starting from parked position
☐☐☐ Stopped in traffic lane
☐☐☐ Parked
☐☐☐ Backing

(Check applicable items)
☐☐ Passing
☐☐ Avoiding vehicle, object, or pedestrian
☐☐ Skidded before applying brakes
☐☐ Skidded after applying brakes
☐☐ Hit and run
☐☐ Driverless moving vehicle

DRIVERS' VIOLATION INDICATED (Check one or more for each driver)
Driver 1 2 3
☐☐☐ Exceeded lawful speed
☐☐☐ Too fast for conditions
☐☐☐ Did not grant right of way to vehicle
☐☐☐ Did not grant right of way to pedestrian
☐☐☐ Followed too closely
☐☐☐ Drove through safety zone
☐☐☐ Passed on hill with ins. clear.
☐☐☐ Passed on curve with ins. clear.
☐☐☐ Cut in after passing
☐☐☐ Other improper passing
☐☐☐ On wrong side of road not in passing
☐☐☐ Failed to signal or gave improper signal
☐☐☐ Improper turn—wide right turn
☐☐☐ Improper turn—cut corner on left turn
☐☐☐ Improper turn—from wrong lane
☐☐☐ Other improper turning
☐☐☐ Disregarded police officer
☐☐☐ Disregarded stop-and-go light
☐☐☐ Disregarded flashing light
☐☑☐ Disregarded stop sign
☐☐☐ Disregarded warning sign
☐☐☐ Improper starting from parked position
☐☐☐ Improper parking location
☐☐☐ Driving while intoxicated
☐☐☐ Other improper actions (explain):
☐☐☐
☐☐☐
☐☐☐
☐☐☐ No improper driving

WHAT PEDESTRIAN WAS DOING (Check one)
☐ Crossing at intersection—with signal
☐ Crossing at intersection—against signal
☐ Crossing at intersection—no signal
☐ Crossing at intersection—diagonally
☐ Crossing not at intersection
☐ Coming from behind parked cars
☐ Walking in roadway—(Check two below)
☐ With traffic
☐ Against traffic
☐ Sidewalks available
☐ Sidewalks not available
☐ Pushing or working on vehicle
☐ Other working in roadway
☐ Playing on roadway
☐ Hitching on vehicle
☐ Not on roadway (Explain)
☐ Specify other action
Occupation

CONDITION OF DRIVERS AND PEDESTRIAN (Check one or more)
Driver 1 2 3 Ped.
☐☐☐☐ Ill
☐☐☐☐ Fatigued
☐☐☐☐ Apparently asleep
☐☐☐☐ Body defect (arms, eyesight, paralysis, etc.)
☑☑☐☐ No apparent defects
☐☐☐☐ Defects not known
Driver 1 2 3 Ped.
☑☑☐☐ Had NOT been drinking
☐☐☐☐ Not known if drinking
HAD BEEN DRINKING, IF SO:
☐☐☐☐ Obviously drunk
☐☐☐☐ Ability impaired
☐☐☐☐ Ability not impaired
☐☐☐☐ Not known if impaired
Explain condition

VEHICLE CONDITION (Check one or more)
Vehicle 1 2 3
☐☐☐ Defective brakes
☐☐☐ Improper lights
☐☐☐ Defective steering mechanism
☐☐☐ Defective tires
☐☐☐ Other defects
☑☑☐ No defects
☐☐☐ Defects not known
☐☐☐ Chains in use
☐☐☐ Equipped with seat belts
☐☐☐ Seat belts in use

DRIVER VISION OBSCURED (Check one or more in each section)
☐ Rain, snow, etc., on windshield
☐ Windshield otherwise obscured
☐ Vision obscured by load on vehicle
☐ Specify other
☐ Vision not obscured
☐ Trees, crops, etc.
☐ Building
☐ Embankment
☐ Signboard
☐ Hillcrest
☐ Parked vehicles
☐ Moving vehicles
☐ (Specify other)
☐ Not obscured

DESCRIBE WHAT HAPPENED (Refer to vehicles by number)
Use this space for listing additional witnesses and injured persons. Also explain questions not fully answered by checking in the boxes provided. If more space is needed use another form or a sheet of paper the same size.

Car 1 was traveling South on College St. at approximately 25 MPH when it reached [illegible] St. [illegible] was riding Bike westerly on [illegible] St. on a BIKE & RODE INTO PATH of CAR 1 & WAS STRUCK by CAR #1

ARRESTS Name NONE Charge
Name Charge

INVESTIGATION: Time notified of accident 3:15 ☐AM ☐PM Time of arrival at the scene 3:20 ☐AM ☐PM Were photographs taken? ☐Yes ☐No
Where else was investigation made? Adel Memorial Hosp. Is investigation complete? ☑Yes ☐No Driver report form furnished to ☑Driver 1 ☐Driver 2

☆ SIGNATURE 157 J. W. [illegible] Chief of Police, [illegible] 11-24-68
Investigator's full name and no. Department Date of report

2

GEORGIA DEPT. OF PUBLIC SAFETY

GEORGIA-FULTON COUNTY
I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

Form SR-57

DATE: 5-16-69 ____ Bureau of Safety Responsibility

AFFIDAVIT

STATE OF Georgia

COUNTY OF Cobb

Accident Case No. ________

I, LEON CAPES, make oath in due form of law that I suffered property damages in the amount of *$ 35.00 and personal injury in the amount of *$ 10,000 & more as a result of a motor vehicle accident which occurred on the 21 day of Nov., 1968, in the City of Sparks and/or in the County of Cook on Highway No. 41. I believe myself entitled to recovery of the above amount from Paul Bell, the driver, and Paul Bell, the owner, of the other motor vehicle(s) involved in such accident and I have not released the said parties from this claim nor has any judgment been render d against me in any court as a result of this accident.

In witness whereof I have hereunto set my hand this 24 day of Mch, 1969.

**SIGNED: Leon Capes

Sworn to and subscribed before me this 24 day of Mch., 1969.

MY COMMISSION EXPIRES: 1972 NOTARY PUBLIC: Justice of the Peace [illegible]

* Show damages in definite amount and you may be required to submit proof of loss.

**If sworn to by person other than injured party show relationship to injured party.

* On personal injury, reverse side must be completed by claimant and attending physician.

MAIL TO: BUREAU OF SAFETY RESPONSIBILITY, P. O. BOX 1456, ATLANTA, GEORGIA.

I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

DATE: 5.16.69 D.S. Harris

Bureau of Safety Responsibility

Note: this form must be completed by you and attending physician in order for personal ~~xxxx~~ injury claim to be processed. Form SR-57A

STATE OF GEORGIA
BUREAU OF SAFETY RESPONSIBILITY
P. O. Box 1456
ATLANTA, GEORGIA

Feb. 28, 1969

500 & Bell
$1,000.00

~~xxx~~ =
~~XXXXIXXXXXXXXXXXXX~~
Leon Capes
c/o Bennett & Moon
P. O. Box 1211
Valdosta, Ga.

In reply refer to:
Accident Case No.: 69-969
Date of Accident : 11-24-63
Place of Accident: Sparks, Cook Co., Ga.

RE: Sherry Sirmans, minor daughert of Melba Sirams Capes

This office has received information showing that you were injured as a result of the above accident. If you are claiming damages for same, please answer completely the questions under Section I, execute the affidavit on the reverse side hereof and have your attending physician complete Section II. If you are physically unable to complete this form, please have someone complete it for you as this form should be returned to this office within ten days.

If the motor vehicle of the party from whom you are claiming damage was covered by an automobile liability policy, or if you are not claiming damages, or if a satisfactory settlement has been made, you may disregard this form in its entirety.

Yours very truly,

D. S. Harris, Jr.

D. S. Harris, Jr., Capt., Ga.S.P.,
Supervisor,
Bureau of Safety Responsibility.

DSH/ hc

****

THIS INFORMATION CANNOT BE USED IN ANY ACTION AT LAW TO RECOVER DAMAGES

SECTION I - TO BE COMPLETED BY INJURED PERSON

Marital status(check one): Married ( ) Single (X) Age: 5 yrs Number dependents: ____

You were(check one): Driver ( ) Passenger ( ) Pedestrian (X) Other: Bicycle

Occupation: Child injured when struck by auto Weekly salary: ____ Days lost Due to injury: ____

Name and address of employer: ____

Signature of injured person: Sherry Sirmons Capes By Leon Capes Date: 3/22/69

****

SECTION II -- TO BE COMPLETED BY ATTENDING PHYSICIAN

Description and nature of injuries: Fractured Rt. Leg and Pelvis & laceration of L. Leg

Cite extent of physical pain and suffering: moderate

Patient hospitalized: Yes (X) No ( ) Period of hospitalization: 11-24-63 to 12-11-63

Patient unable to work: Yes (X) No ( ) Period of disability: ____

Permanent injuries: Yes (X) No ( ) Possible scar

OVERSIZE PAGE - SEE NEXT FRAME FOR REMAINDER OF PAGE

Note: this form must be completed by you ... Form SR-51A
personal xxxxx injury claim to be processed.

STATE OF GEORGIA
BUREAU OF SAFETY RESPONSIBILITY
P. O. Box 1456
ATLANTA, GEORGIA
Feb. 28, 1969.

50 & Bell
$1,000.00

xxx =
XXXXTXXXXXXXXXXXXX
Leon Capes
c/o Bennett & Moon
P. O. Box 1211
Valdosta, Ga.

In reply refer to:
Accident Case No.: 69-969
Date of Accident : 11-24-63
Place of Accident: Sparks, Cook Co., Ga.

RE: Sherry Sirmans, minor daughert of Melba Sirams Capes

This office has received information showing that you were injured as a result of the above accident. If you are claiming damages for same, please answer completely the questions under Section I, execute the affidavit on the reverse side hereof and have your attending physician complete Section II. If you are physically unable to complete this form, please have someone complete it for you as this form should be returned to this office within ten days.

If the motor vehicle of the party from whom you are claiming damage was covered by an automobile liability policy, or if you are not claiming damages, or if a satisfactory settlement has been made, you may disregard this form in its entirety.

Yours very truly,

D. S. Harris, Jr.

D. S. Harris, Jr., Capt., Ga.S.P.,
Supervisor,
Bureau of Safety Responsibility.

DSH/ hc

****

THIS INFORMATION CANNOT BE USED IN ANY ACTION AT LAW TO RECOVER DAMAGES

SECTION I - TO BE COMPLETED BY INJURED PERSON

Marital status(check one): Married ( ) Single (X) Age: 5 yrs Number dependents: ____

You were(check one): Driver ( ) Passenger ( ) Pedestrian (X) Other: Bicycle

Occupation: child injured when struck by auto Weekly salary: ____ Days lost Due to injury: ____

Name and address of employer: ____

Signature of injured person: Sherry Sirmons Capes by Leon Capes Date: 3/22/69.

****

SECTION II -- TO BE COMPLETED BY ATTENDING PHYSICIAN

Description and nature of injuries: Fractured Legs and Pelvis & laceration of L Leg

Cite extent of physical pain and suffering: moderate

Patient hospitalized: Yes (X) No ( ) Period of hospitalization: 11-24-63 to 12-11-63

Patient unable to work: Yes (X) No ( ) Period of disability: ____

Permanent injuries: Yes (X) No ( ) Degree of permanent injury: disfiguring scar

Cost of your services to date: $ 1,057.50 all cost

Estimated total medical cost of recovery from injury: $ ____

Signature of attending physician: Jerry S. Purvis, M.D. 3/25/69

RECEIVED APR 1969

2

ORGIA-FULTON COUNTY
hereby certify that this is a true and correct copy of
ne original or duplicate original in the files of the
ureau of Safety Responsibility, Revocation and
spension Unit, Department of Public Safety.
ATE: 5-16-69 D S Harris
Bureau of Safety Responsibility

Form SR-50

April 10, 1969

Paul J. Bell, Jr.
P. O/ Box #3
Sparks, Ga.

In reply refer to:
Accident Case No.: 69-969
Date of Accident : 11-24-68
Place of Accident: Sparks, Cook Co., Ga.

The Bureau of Safety Responsibility has received information that you or a vehicle owned by you were involved in a motor vehicle accident which comes within the provisions of the Safety Responsibility Law.

Under the Safety Responsibility Law, failure to file a written report of an accident is grounds for the suspension of drivers license until the report is filed and not to exceed thirty days thereafter. A $25.00 fine is provided upon conviction for failure to file report.

Please fill in the enclosed form setting forth the information requested therein and return it to this Bureau immediately along with this letter. Unless this form is received within a period of ten days from the date of this letter, an order of suspension will be issued and an officer of the law will be directed to pick up the license.

If you or your vehicle were covered by an automobile liability policy at the time of the above accident, obtain a notice of insurance, form SR-21, from your insurance company and attach it to this report or have your insurance company forward such form direct to this Bureau.

If the other party or parties involved were not covered by an automobile liability policy and you are claiming damages as a result of this accident, please execute the affidavit on the reverse side of this letter.

If the damage claims resulting from this accident have been settled, please execute the first section of the general release on the reverse side of this letter showing that you have released the other party or parties involved.

Yours very truly,

D S Harris

D. S. Harris, Jr., Capt., Ga.S.P.,
Supervisor,
Bureau of Safety Responsibility.

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the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

DATE: 5.11.69 Bureau of Safety Responsibility

STATE OF GEORGIA

FORM SR 8 (REV. 9-26-67)

DEPARTMENT OF PUBLIC SAFETY

BUREAU OF SAFETY RESPONSIBILITY

P. O. BOX 1456

ATLANTA, GEORGIA 30301

To Paul J. Bell, Jr.
P. O. Box #8
Sparks, Ga.

CLAIMANT: Leon and Melba Capes representing their minor daughter Sherry Sirman

IMPORTANT
In reply refer to:

Accident Case No.	69-969
Date of Accident	11-24-68
Place of Accident	Sparks, Cook Co., Ga.

ORDER OF SUSPENSION

EFFECTIVE DATE OF SUSPENSION ~~May 10, 1969~~ June 10, 69 Drlf as

AS A RESULT OF THE ABOVE REFERRED TO MOTOR VEHICLE ACCIDENT IN WHICH YOU OR A MOTOR VEHICLE OWNED BY YOU WERE INVOLVED, YOU HAVE BECOME SUBJECT TO THE GEORGIA MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Failure to comply with the provisions of this order will result in the suspension of all licenses, registration certificates and plates issued in your name for a period of three years. The herein suspension is ordered in accordance with the provisions of Georgia Laws 1951, Act 386, as amended.

You are required on or before the effective date of suspension:

To (A-1) Deposit cash, certified check, cashier's check or money order in the amount of $_____ with the Department of Public Safety, Bureau of Safety Responsibility, as security to satisfy any judgment(s) for damages resulting from the accident. In lieu of security, you may post a surety bond, Form SR-20, in the above amount, which must be executed by you and a surety company authorized to do business in this State or you may post a property bond, Form SR-20-A, as provided under Section 5, Subsection (d) of Act 386 as amended by Georgia Laws of 1956. Forms will be furnished by Bureau on request.

Or (A-2) To submit to the Department of Public Safety, Bureau of Safety Responsibility, a notarized release for damages from all persons injured, whether a pedestrian, a... occupant of your vehicle or any other vehicle involved in the accident, and from all persons whose property was damaged, which may be a general release or a conditional release based on an agreement to pay an agreed amount in installments.

And (B) File proof of financial responsibility for the future, Form SR-22-A, for period of one year.

And (C) Pay a restoration fee of $10.00 (cash, certified check or money order).

IMPORTANT THE ABOVE SUSPENSION WILL NOT APPLY IF YOU HAD IN EFFECT AT THE TIME OF THE ACCIDENT A STANDARD PROVISIONS AUTOMOBILE LIABILITY POLICY INSURING YOUR LIABILITY FOR DAMAGES RESULTING FROM THE ACCIDENT PROVIDED CERTIFICATE OF INSURANCE, FORM SR-21, IS FILED ON YOUR BEHALF BY YOUR INSURANCE COMPANY

OVERSIZE PAGE – SEE NEXT FRAME FOR REMAINDER OF PAGE

E: 5-11-69 Bureau of Safety Responsibility

STATE OF GEORGIA

FORM SR 6 (REV. 9-26-67)

DEPARTMENT OF PUBLIC SAFETY

BUREAU OF SAFETY RESPONSIBILITY

P. O. BOX 1456

ATLANTA, GEORGIA 30301

To Paul J. Bell, Jr.
P. O. Box #8
Sparks, Ga.

CLAIMANT: Leon and Melba Capes representing their minor daughter Sherry Sirman

IMPORTANT
In reply refer to:

Accident Case No.	68-969
Date of Accident	11-24-68
Place of Accident	Sparks, Cook Co., Ga.

ORDER OF SUSPENSION

EFFECTIVE DATE OF SUSPENSION ~~May 10, 1969~~ June 10, 69 Draft as

AS A RESULT OF THE ABOVE REFERRED TO MOTOR VEHICLE ACCIDENT IN WHICH YOU OR A MOTOR VEHICLE OWNED BY YOU WERE INVOLVED, YOU HAVE BECOME SUBJECT TO THE GEORGIA MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Failure to comply with the provisions of this order will result in the suspension of all licenses, registration certificates and plates issued in your name for a period of three years. The herein suspension is ordered in accordance with the provisions of Georgia Laws 1951, Act 386, as amended.

You are required on or before the effective date of suspension:

To (A-1) Deposit cash, certified check, cashier's check or money order in the amount of $_____ with the Department of Public Safety, Bureau of Safety Responsibility, as security to satisfy any judgment(s) for damages resulting from the accident. In lieu of security, you may post a surety bond, Form SR-20, in the above amount, which must be executed by you and a surety company authorized to do business in this State or you may post a property bond, Form SR-20-A, as provided under Section 5, Subsection (d) of Act 386 as amended by Georgia Laws of 1956. Forms will be furnished by Bureau on request.

Or (A-2) To submit to the Department of Public Safety, Bureau of Safety Responsibility, a notarized release for damages from all persons injured, whether a pedestrian, an occupant of your vehicle or any other vehicle involved in the accident, and from all persons whose property was damaged, which may be a general release or a conditional release based on an agreement to pay an agreed amount in installments.

And (B) File proof of financial responsibility for the future, Form SR-22-A, for period of one year.

And (C) Pay a restoration fee of $10.00 (cash, certified check or money order).

IMPORTANT THE ABOVE SUSPENSION WILL NOT APPLY IF YOU HAD IN EFFECT AT THE TIME OF THE ACCIDENT A STANDARD PROVISIONS AUTOMOBILE LIABILITY POLICY INSURING YOUR LIABILITY FOR DAMAGES RESULTING FROM THE ACCIDENT PROVIDED CERTIFICATE OF INSURANCE, FORM SR-21, IS FILED ON YOUR BEHALF BY YOUR INSURANCE COMPANY.

Date Issued APRIL 10, 1969

mc

Supervisor, Bureau of Safety Responsibility

Mail driver's license(s), registration certificate(s), and registration plate(s) to: Department of Public Safety, Bureau of Safety Responsibility, P. O. Box 1456, Atlanta, Ga. 30301.

(OVER)

6

HUGH D. WRIGHT
ATTORNEY AT LAW
107 SOUTH BURWELL AVENUE
ADEL, GEORGIA

P. O. BOX 396

TELEPHONE XXXXXXX
896-2413

GEORGIA-FULTON COUNTY
I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

DATE: 5-16-69

Bureau of Safety Responsibility

Captain D. S. Harris, Jr.
Bureau of Safety Responsibility
P. O. Box 1456
Atlanta, Georgia

Dear Captain Harris:

Re: Paul J. Beall, Jr.
Case No. 69-969
Date: 11-24-68

You perhaps will recall that the above captioned matter was discussed with you last Thursday night by Rep. Dorsey Matthews and me on the telephone while you were at home.

Mr. Bell is the pastor of the Methodist Church at Sparks, Georgia, and I have talked with the witnesses and the Chief of Police at Sparks and it seems that the accident was completely unavoidable. Rev. Bell was driving at a speed of about 25 miles per hour and the 5 year old child came from behind obstructions directly into the path of his car. It would be much appreciated if you would extend the effective date of suspension for a period of at least thirty (30) days or, if possible, until all channels of appeal have been exhausted. I am informed that the hospital bill of approximately $1500, including the fee of the doctor was paid by an insurance company of the natural father of the child.

Any assistance that you might be able to render will be much appreciated by all concerned. Also, please accept this letter as a request for hearing before the Director or such person as may be designated by him. Mr. Bell would be severely handicapped by a suspension of his license and license plate.

Sincerely,

Hugh D. Wright

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I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety

DATE: 5.16.69

Bureau of Safety Responsibility

SR-9

STATE OF GEORGIA
DEPARTMENT OF PUBLIC SAFETY
BUREAU OF SAFETY RESPONSIBILITY

ORDER FOR HEARING ON SUSPENSION OF LICENSE AND REGISTRATION UNDER 92A-605

RE: Accident Case No.: 69-569

THIS will acknowledge receipt of request for a hearing concerning drivers license and registration certificates and plates of Paul J. Beall, Jr. P.O. Box E, Sparks, Georgia, as a result of accident case as captioned.

THEREFORE, Sgt. Capt. D. S. Harris, Jr. of the Georgia State Patrol is designated official representative of the Department to conduct the hearing on the 7th. day of May, 1969 at 10:00 P M, in the Cook County, Sheriff's Office, Adel, Georgia.

THE ONLY evidence that the Department can accept and consider is: (a) was the petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided; or (c) does petitioner come within any of the exceptions of the Law.

AT THE conclusion of the hearing all pertinent facts and materials presented will be forwarded to the State Patrol Headquarters for a review and an official determination of the action by the Department in view of evidence presented at the hearing. A written decision will be mailed from the office of the Supervisor of the Bureau of Safety Responsibility. The decision shall be final unless licensee desires to appeal as provided by 92A-602.

GIVEN under the Seal of the Department of Public Safety, this 28th. day of April, 1969.

W. S. Hamrick

SR-9

STATE OF GEORGIA
DEPARTMENT OF PUBLIC SAFETY
BUREAU OF SAFETY RESPONSIBILITY

ORDER FOR HEARING ON SUSPENSION OF LICENSE AND REGISTRATION UNDER 92A-605

RE: Accident Case No.: 69-569

THIS will acknowledge receipt of request for a hearing concerning drivers license and registration certificates and plates of Paul J. Beall, Jr. P.O. Box 8, Sparks, Georgia, as a result of accident case as captioned.

THEREFORE, Sgt. Capt. D. S. Harris, Jr. of the Georgia State Patrol is designated official representative of the Department to conduct the hearing on the 7th. day of May, 1969 at 1:00 P M, in the Cook County, Sheriff's Office, Adel, Georgia.

THE ONLY evidence that the Department can accept and consider is: (a) was the petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided; or (c) does petitioner come within any of the exceptions of the Law.

AT THE conclusion of the hearing all pertinent facts and materials presented will be forwarded to the State Patrol Headquarters for a review and an official determination of the action by the Department in view of evidence presented at the hearing. A written decision will be mailed from the office of the Supervisor of the Bureau of Safety Responsibility. The decision shall be final unless licensee desires to appeal as provided by 92A-602.

GIVEN under the Seal of the Department of Public Safety, this 22nd. day of April, 1969.

D. S. Harris, Jr., Capt., G.S.P.
Supervisor,
Bureau of Safety Responsibility.

DSH/ss

cc: Attorney Hugh D. Wright
Rep. Lorsey Matthews

11

GEORGIA-FULTON COUNTY
I hereby certify that this is a true and correct copy of the original or duplicate original in the files of the Bureau of Safety Responsibility, Revocation and Suspension Unit, Department of Public Safety.

DATE: 5-16-69 Bureau of Safety Responsibility

May 8, 1969

DECISION OF HEARING

Hearing held at the Cook County, Sheriff's Office, Adel, Georgia on Accident Case No. 69-969, at 1:00 P.M., May 7, 1969 on petition of Paul J. Bell, Jr., filed by his attorney, Hugh D. Wright. Hearing officer was Capt. D. S. Harris, Jr.

The fact that petitioner contends that the accident was unavoidable has no bearing on the hearing and cannot be considered. The only points that the Department can accept and consider are: (a) was petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided, or (c) does petitioner come within any of the exceptions of the Law.

Information in file shows petitioner to be owner and operator of vehicle involved in the accident and as such does come within the provisions of the Safety Responsibility Law; therefore, it is the decision that Paul J. Bell, Jr., must comply with the provisions set forth on our SR-8 issued under date of April 10, 1969 with the provision that the Department will extend the date of suspension until June 10, 1969, so that petitioner will have additional time for complying with the provisions of the Law.

D. S. Harris, Capt., G.S.P.,
Supervisor,
Bureau of Safety Responsibility.

ATTEST:

DSH/as

IN THE SUPERIOR COURT
COOK COUNTY

THE STATE OF GEORGIA

vs.

PAUL J. BELL, JR.

PETITION FOR RETURN OF LICENSE AND LICENSE PLATES BEFORE THE BUREAU OF SAFETY RESPONSIBILITY OF THE DEPARTMENT OF PUBLIC SAFETY

Now comes PAUL J. BELL, JR. in the above stated cause, and being dissatisfied with the judgment rendered therein, enters this his appeal to the Superior Court of Cook County, Georgia.

/s/ Hugh Wright
Attorney for
Paul J. Bell, Jr.

Filed in Office this 8
day of May, 1969.

Chlois Lollis Dpt. Clerk

IN THE SUPERIOR COURT
COOK COUNTY

In the matter of the State of Georgia v. Paul J. Bell, Jr., reference to the decision of the Bureau of Safety Responsibility of the Georgia Department of Public Safety refusing to restore the driver's license and automobile license plates upon the application of the appellant, the said matter is set for a hearing before this Court at 10 o'clock A. M. on the 22nd day of May, 1969, at the my chambers in the Courthouse in Adel, Cook County, Georgia. It is further ordered that the Georgia Department of Public Safety be notified of this appeal by sending a copy of the same to said Department by certified mail.

IT IS SO ORDERED on this the 8th day of May, 1969.

/s/ H. W. Lott
Judge, Superior Courts
Alapaha Judicial Circuit

IN SUPERIOR COURT OF COOK COUNTY

STATE OF GEORGIA
COUNTY OF COOK

Case No. 477

PAUL J. BELL, JR.

v.

DEPARTMENT OF PUBLIC SAFETY

DECISION

This action came on for hearing on May 22, 1969, before the Court, Honorable H. W. Lott, Judge, presiding, and after consideration of the petition and hear-

ing oral testimony, argument of counsel and observing documentary evidence, it appears as follows:

FINDINGS OF FACT

That the petitioner was involved in an automobile accident on November 24, 1968. The child who rode her bicycle into the side of petitioner's moving automobile was injured. Her medical expenses as a result of the injuries sustained totaled $1,057.50. The petitioner was not at fault.

The petitioner was ordered by the Department of Public Safety to show proof of financial responsibility or have his license suspended. A hearing was held by the Department of Public Safety at petitioner's request.

The Hearing Officer determined that the petitioner was involved in the accident and that he had failed to comply with Georgia's Financial Responsibility law. It was ordered that petitioner's driver's license be suspended.

Counsel for the petitioner stated in his place that suit had not been filed against the petitioner by or on behalf of the injured party.

It is therefore ORDERED AND ADJUDGED that the petitioner's driver's license not be suspended. It is further ORDERED that when suit is filed against petitioner for the purpose of recovering damages for the injuries sustained by the child in the accident with petitioner that the Department of Public Safety suspend his license if he has not then complied with the Financial Responsibility law.

This the 1st day of Aug., 1969.

/s/ H. W. Lott
Judge, Superior Courts
Alapaha Judicial Circuit

Filed in office this 20 day
of Aug., 1969.

L. W. DeVane, Clerk

IN THE SUPERIOR COURT OF COOK COUNTY
STATE OF GEORGIA

Case No. 477

PAUL J. BELL, JR.

v.

DEPARTMENT OF PUBLIC SAFETY

STIPULATION OF PARTIES—August 29, 1969

A hearing was held in this action on May 22, 1969, before the Court, the Honorable H. W. Lott, Judge, presiding. The proceedings were not transcribed by a court reporter. In accordance with Ga. Code Ann. § 6-805(g) this agreement between counsel for the parties has been prepared. This agreement sets forth the facts that were developed at this May 22, 1969 hearing before Judge Lott.

On November 24, 1968, Paul J. Bell, Jr. was involved in an automobile accident. A child rode her bicycle into the side of the automobile owned and being operated by Mr. Bell. The child's medical expenses as a result of the injuries sustained in this accident totaled $1,057.50.

An affidavit was filed with the Department of Public Safety setting forth the salient details of this automobile accident between Mr. Bell and the child.

On April 10, 1969, the Department of Public Safety notified Mr. Bell that he must comply with the requirements of Ga. Code Ann. § 92A-605 or his driver's license, certificates of registration, and license plates would be suspended. Mr. Bell requested a hearing and this was accorded him by the Department of Public Safety on May 7, 1969, in the sheriff's office, Cook County, Adel, Georgia.

The hearing officer Captain D. S. Harris, Jr. found that Mr. Bell and his vehicle were involved in an accident resulting in personal injuries of $1,057.50; that Mr. Bell had not complied with the financial responsibility requirements of Ga. Code Ann. § 92A-605 in that

he did not show proof of: 1. Liability insurance coverage running to the injured party or 2. Surety bond or other evidence of financial responsibility as required by Ga. Code Ann. § 92A-605; 3. That Mr. Bell was subject to the requirements of Ga. Code Ann. § 92A-605.

Based on these findings, the hearing officer ordered that Mr. Bell's driver's license, registration certificates and license plates be suspended for a three-year period beginning June 10, 1969.

At the hearing before Judge Lott, Mr. Bell was found to be free from fault. Also it was established that suit had not been filed against Mr. Bell by the child or anyone on her behalf seeking recovery for the injuries sustained in the accident.

In summary form the facts as developed at the hearing before Judge Lott are these: 1. Mr. Bell was driving his automobile on November 24, 1968, at the time of the accident with the bicycle; 2. The child rode her bicycle into Mr. Bell's moving automobile and suffered injuries resulting in medical expenses of $1,057.50; 3. The Department of Public Safety was formally advised of the accident and the injuries suffered by the child; 4. The Department of Public Safety requested Mr. Bell to show proof of financial responsibility as to the damages suffered by the child; 5. The petitioner did not show any proof of financial responsibility; 6. The Department of Public Safety, after holding a hearing at which Mr. Bell appeared, ordered that his driver's license, registration certificates and license plates be suspended on June 10, 1969; 7. Mr. Bell was found to be free from fault in the accident with the bicycle; 8. Suit had not been filed against Mr. Bell as of May 22, 1969, for recovery of the child's damages.

Counsel for the Department of Public Safety argued to the Court the decisions in these cases: *Turmon* v. *Department of Public Safety*, 222 Ga. 843 (1967); *Burson* v. *Johnson*, 118 Ga. App. 381 (1968) and *Grinstead* v. *Purvis*, 101 Ga. App. 625 (1960).

After argument of counsel Judge Lott ordered that the Department of Public Safety's suspension order be

stayed unless and until suit be filed against Mr. Bell for recovery of the damages to the child (bicyclist) resulting from the accident.

The below signed agree that these facts were developed before Judge Lott in this action on May 22, 1969. The below signed further agree that this document be filed with the clerk of the Superior Court of Cook County to become a part of the record in this case as set forth in Ga. Code Ann. § 6-805(g).

8/29/69
Date

/s/ Hugh Wright
HUGH WRIGHT
Counsel for
Paul J. Bell, Jr.

8/29/69
Date

/s/ Larry H. Evans
LARRY H. EVANS
Counsel for Department of
Public Safety

Filed in Office this 29 day
of Aug., 1969.

L. W. DeVance, Clerk

IN THE SUPERIOR COURT OF COOK COUNTY
STATE OF GEORGIA

Case No. 477

PAUL J. BELL, JR.

v.

DEPARTMENT OF PUBLIC SAFETY

NOTICE OF APPEAL—September 12, 1969

Notice is hereby given that Colonel R. H. Burson, in his official capacity as Director of the Department of Public Safety, defendant above-named, hereby appeals to the Court of Appeals the order of this court granting certain relief to the above-styled plaintiff entered in this action on August 20, 1969.

The clerk will please omit nothing from the record on appeal.

The trial was not reported therefore an agreement in accordance with Ga. Code Ann. § 6-805(g) has been filed for inclusion in the record on appeal.

This 12th day of September, 1969.

/s/ Arthur K. Bolton
ARTHUR K. BOLTON
Attorney General

/s/ Harold N. Hill, Jr.
HAROLD N. HILL, JR.
Executive Assistant
Attorney General

Please serve:

/s/ Marion O. Gordon
MARION O. GORDON
Assistant Attorney General

LARRY H. EVANS
P. O. Address:
132 Judicial Building
40 Capitol Square
Atlanta, Georgia 30334

/s/ Larry H. Evans
LARRY H. EVANS
Attorney

[Certificate of Service (Omitted in Printing)]

IN THE COURT OF APPEALS OF GEORGIA

Case No. 44887

R. H. BURSON, Director Department of Public Safety,
APPELLANT

v.

PAUL J. BELL, JR., APPELLEE

ENUMERATION OF ERRORS—Filed October 3, 1969

1. The lower court ruled contrary to the law by basing its order on a fact-finding that the appellee was free from fault.
2. The lower court ruled contrary to the law by staying the order of suspension of the Director of the Department of Public Safety until suit be filed by the injured party against the appellee to recover for bodily injuries sustained.
3. The lower court ruled contrary to the evidence by staying the order of suspension issued by the Director of the Department of Public Safety.

STATEMENT OF JURISDICTION

The Court of Appeals of Georgia and not the Supreme Court of Georgia has jurisdiction of this case as it is a case concerning an order (Record 16, 17) issued by the Superior Court of Cook County staying the order of suspension issued by the appellant to the appellee herein, and it is not within the exclusive jurisdiction of the

Supreme Court of Georgia as specified in the Constitution of the State of Georgia, Art. VI, § 2, par. 4.

/s/ Arthur K. Bolton
ARTHUR K. BOLTON
Attorney General

/s/ Harold N. Hill, Jr.
HAROLD N. HILL, JR.
Executive Assistant
Attorney General

/s/ Marion O. Gordon
MARION O. GORDON
Assistant Attorney General

/s/ Larry H. Evans
LARRY H. EVANS
Attorney

Please serve:
LARRY H. EVANS
P. O. Address:
132 Judicial Building
40 Capitol Square
Atlanta, Georgia 30334

[Certificate of Service (Omitted in Printing)]

Case No. 44887

COURT OF APPEALS OF GEORGIA

September Term, 1969

BURSON, Director, etc.

versus

BELL

ENUMERATION OF ERRORS

Filed in office Oct. 3, 1969

/s/ Morgan Thomas
C. C. A. Ga.

Case No. 25856

SUPREME COURT OF GEORGIA

Filed in Office Apr. 15, 1970

/s/ Eva F. Townsend
Deputy Clerk of Supreme Court of Georgia

IN THE COURT OF APPEALS OF GEORGIA

44887

BURSON, Director

v.

BELL

DECISION—March 4, 1970

WHITMAN, Judge. This appeal arises from a suspension of the driver's license and vehicle registration of Paul J. Bell under the Motor Vehicle Safety Responsibility Act (hereafter called the "Act"). Code Ann. § 92A-601 et seq. (Ga. L. 1951, p. 565 et seq., as amended).

On November 24, 1968 Bell was involved in an accident with a bicycle. A report of the accident was filed with the Department of Public Safety. Subsequently, affidavits relating to bodily injury were also filed with the Director. Upon receipt of these affidavits the Director issued an "Order of Suspension" which notified Bell that on a certain date the suspension of his driver's license and vehicle registration would become effective in accordance with Georgia Laws 1951, Act 386. The notice to Bell stated that the suspension would become effective unless he either (1) submitted a notarized release from all persons who suffered personal or property damage, or (2) deposited security or posted bond sufficient to satisfy any judgment for damages resulting from the accident. The notice also stated that Bell would be required to file proof of financial responsibility for a period of one year and pay a restoration fee of $10 prior to the effective date of the suspension.

Bell requested a hearing before the Director which was granted. But the Director ruled that bell must comply with the provisions of the suspension order or the suspension would become effective. Pursuant to the provisions of the Act (Code Ann. § 92A-601, as amended), Bell appealed the Director's ruling to the superior court for a de novo hearing. By stipulation of the par-

ties the following facts were developed at the de novo hearing:

"1. Mr. Bell was driving his automobile on November 24, 1968, at the time of the accident with the bicycle; 2. The child rode her bicycle into Mr. Bell's moving automobile and suffered injuries resulting in medical expenses of $1,057.50; 3. The Department of Public Safety was formally advised of the accident and the injuries suffered by the child; 4. The Department of Public Safety requested Mr. Bell to show proof of financial responsibility as to the damages suffered by the child; 5. The petitioner did not show any proof of financial responsibility; 6. The Department of Public Safety, after holding a hearing at which Mr. Bell appeared, ordered that his driver's license, registration certificates and license plates be suspended . . . ; 7. Mr. Bell was found to be free from fault in the accident with the bicycle; 8. Suit had not been filed against Mr. Bell as of May 22, 1969, for recovery of the child's damages."

The trial court entered an order which, after summarizing the above facts, states the following:

"It is . . . ORDERED AND ADJUDGED that the petitioner's driver's license not be suspended. It is further ORDERED that when suit is filed against petitioner for the purpose of recovering damages for the injuries sustained by the child in the accident with petitioner that the Department of Public Safety suspend his license if he has not then complied with the Financial Responsibility law."

The Director of the Department of Public Safety has appealed from the latter order, enumerating the same as error. *Held*:

The Act unequivocally specifies that the Director shall suspend the license and registration of any operator or owner "in any manner involved in the accident unless or until the operator or owner has previously furnished or immediately furnishes security, sufficient in the judgment of the Director to satisfy any judgments for damages or injuries resulting from the accident as may be

recovered against the operator or owner by or on behalf of any person aggrieved . . ." Code Ann. § 92A-605, as amended.

When the above section of the Act is applied to the facts stipulated by the parties and found by the lower court, suspension is required. "Fault" or "innocence" are completely irrelevant factors. The suspension requirement is mandatory and a license "may be re-instated only if the driver shows proof of financial responsibility as required by law or it is shown that he comes within one of the exceptions of Code Ann. § 92A-605 (c) or § 92A-606." Burson v. Johnson, 118 Ga. App. 381, 382 (163 SE2d 857). See also Turmon v. Dept. of Public Safety, 222 Ga. 843 (2) (152 SE2d 884). And see generally Annotation entitled Validity of Motor Vehicle Responsibility Act, 35 ALR2d 1011, and Supplemental Annotation, Later Case Service for 32-39 (1969 Ed.), p. 407 et seq.

The lower court's order that Bell's license not be suspended until a damage suit be instituted against him is contrary to law and erroneous.

Judgment reversed. Jordan, P.J., and Evans, J., concur.

Argued November 4, 1969—Decided March 4, 1970—Rehearing denied March 17, 1970—Cert. applied for.

Suspension of driver's license, look Superior Court. Before Judge Lott.

Arthur K. Bolton, Attorney General, Harold N. Hill, Jr., Executive Assistant Attorney General, Marion O. Gordon, Assistant Attorney General, Larry H. Evans, for appellant.

William H. Traylor, Elizabeth R. Rindskopf, for appellee.

44887

COURT OF APPEALS
OF THE STATE OF GEORGIA

Atlanta, March 4, 1970

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

R. H. Burson, Director, etc. v. P. J. Bell, Jr.

This case came before this court on appeal from the Superior Court of Cook County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed. Jordan, P. J., Whitman and Evans, JJ., concur.

Bill of Costs, $30.00

44887

COURT OF APPEALS
OF THE STATE OF GEORGIA

Atlanta, March 17, 1970

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

R. H. Burson, Director, etc. v. P. J. Bell, Jr.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

25856

SUPREME COURT OF GEORGIA

Atlanta, April 23, 1970

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

Paul J. Bell, Jr., v. R. H. Burson, Director,
Department of Public Safety

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur.

Bill of Costs, $15.00

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta, May 20, 1970

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Elizabeth Roediger Rindskopf paid the above bill of costs. Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Henry H. Cobb
Clerk

Case No. 44887

Court of Appeals of Georgia

Remittitur from Supreme Court

Filed in office May 26, 1970

/s/ Morgan Thomas
Clerk Court of Appeals of Georgia

SUPREME COURT OF THE UNITED STATES

No. 5586, October Term, 1970

PAUL J. BELL, JR., PETITIONER

v.

R. H. BURSON, Director, George Department of Public Safety

On petition for writ of Certiorari to the Court of Appeals of the State of Georgia.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

December 21, 1970

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 416136 499

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5586

PAUL J. BELL, JR.,

Petitioner,

v.

R. H. BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

PETITIONER'S BRIEF

HOWARD MOORE, JR.
ELIZABETH ROEDIGER RINDSKOPF
PETER E. RINDSKOPF

Suite 1154
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303

WILLIAM H. TRAYLOR

551 Forrest Road, N.E.
Atlanta, Georgia 30312

Attorneys for Petitioner

Washington, D. C. · THIEL PRESS · 202 · 393-0875

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 5586

PAUL J. BELL, JR.,

Petitioner,

v.

R. H. BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

PETITIONER'S BRIEF

OPINION BELOW

The opinion below has been reported *sub. nom, Burson v. Bell,* 121 Ga. App. 418, 174 S.E. 2d 235 (1970).

JURISDICTION

The judgment of the Court of Appeals of the State of Georgia was entered on March 4, 1970; a motion for rehearing was denied on March 17, 1970. On April 15, 1970, a Petition for Writ of Certiorari to the Court of Appeals of Georgia was filed in the Georgia Supreme Court; that peti-

tion was denied without opinion on April 23, 1970. Thereafter petitioner filed his Application for Stay of Remittitur with the Court of Appeals on April 29, 1970; an order granting stay pending this petition for certiorari in the United States Supreme Court was granted by the Court of Appeals on May 26, 1970. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), petitioner having claimed violation of his rights under the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the constitutionality of portions of the Georgia Motor Vehicle Safety Responsibility Act, Ga. Code Ann. 92A-601, *et. seq.*, which are set forth in an appendix *infra* pp. la ff.

This action also involves the Fourteenth Amendment to the Constitutional of the United States.

QUESTIONS PRESENTED

1. Whether Ga. Code Ann. 92A-601, *et seq.*, the Georgia Motor Vehicle Safety Responsibility Act [hereinafter referred to as "Act"], violates the due process clause of the Fourteenth Amendment to the United States Constitution, by failing to provide an uninsured person involved in certain automobile accidents hearings on the question of liability prior or subsequent to the suspension of his driver's license, motor vehicle registration, and tag?

STATEMENT

A. INITIATION OF THIS LITIGATION

Petitioner, a white Methodist minister to a rural Georgia community, is a licensed Georgia driver. On November 24, 1968, he was involved in an accident in which a juvenile cyclist was injured. Petitioner was the owner and driver of

the sole car involved in this accident. A report of the accident was duly filed with the Georgia Department of Public Safety [Appendix, p. 4]. Thereafter, affidavits claiming bodily injury in the amount of $5,000.00 were filed with the Respondent Director of Public Safety on behalf of the injured child [Appendix, pp. 6 ff.] Upon receipt thereof, Director Burson issued an "Order of Suspension" on April 10, 1969 [Appendix, p. 9] notifying petitioner that suspension of his driver's license, automobile registration certificate and tag would become effective on May 10, 1969, unless petitioner complied with the Safety Responsibility Act. Compliance required petitioner to: (1) submit a notarized release from all persons suffering personal injury or property damage of $100.00 or more as a result of the accident; *or* (2) file proof of insurance coverage with the Department of Public Safety; *or* (3) post bond in the entire amount of damages claimed, *i.e.*, $5,000.00. The notice stated further that failure to obtain such a release of liability prior to the suspension date would necessitate the filing of proof of future financial responsibility for one year's period, as well as a $10.00 fee for the restoration of driver's license, motor vehicle registration, and tag.

B. ADMINISTRATIVE PROCEDURE

Petitioner promptly requested [Appendix, p. 10] and on May 7, 1969 received, an administrative hearing before the Director of Public Safety, as provided by Ga. Code Ann. 92A-602. Petitioner's attempts to present evidence as to his non-liability at that hearing were denied as contrary to the provisions of the Act. Petitioner was required to comply with the original order of suspension by June 10, 1969 or to forfeit his driver's license, motor vehicle registration certificates and license tags for a three year period [Appendix, p. 12].

Petitioner appealed this administrative order to the Superior Court of Cook County, Georgia for a *de novo* hearing as allowed by Ga. Code Ann. 92A-602 [Appendix,

p. 13]. At this judicial hearing the court allowed petitioner to present evidence on his liability and found him free from any fault in the accident. This finding is reflected in the stipulation entered into by the parties for purposes of appeal [Appendix, p. 16]. On August 1, 1969, the Superior Court of Cook County entered its final order, stating in part:

> It is . . . ORDERED AND ADJUDGED that the petitioner's driver's license not be suspended. It is further ORDERED that when suit is filed against petitioner for the purpose of recovering damages for the injuries sustained by the child in the accident with petitioner that the Department of Public Safety suspend his license if he has not then complied with the Financial Responsibility Law. [Appendix, p. 15]

C. APPEAL TO THE GEORGIA COURT OF APPEALS

Thereafter the Director of Public Safety appealed the lower court's decision and order to the Court of Appeals of Georgia, enumerating as error the fact that the lower court had considered the question of fault and liability at its hearing, and had based its order on a finding of non-liability [Appendix, pp. 19, 20].

On March 4, 1970 the Georgia Court of Appeals entered its decision reversing the judgment of the Superior Court of Cook County. Its decision, states in part:

> When the above section of the Act [Ga. Code Ann. 92A-605] is applied to the facts stipulated by the parties and found by the lower court, suspension is required. "Fault" or "innocence" are completely irrelevant factors. The suspension requirement is mandatory and a license "may be re-instated only if the driver shows proof of financial responsibility as required by law, or it is shown that he comes within one of the exceptions of Ga. Code Ann. § 92A-605 (c) or § 92A-606." [Appendix, p. 25].

D. PROCEEDINGS SUBSEQUENT TO DECISION OF THE COURT OF APPEALS

Petition for discretionary certiorari was subsequently filed with the Supreme Court of Georgia and denied without opinion on April 23, 1970 [Appendix, p. 27]. A timely petition for certiorari was filed in this Court thereafter and granted by order of this Court dated December 21, 1970 [Appendix, p. 27]. Prior to granting review, this Court requested and received memoranda from the parties on the question of when and how the federal question was raised.

Although more than two years have elapsed since the accident commencing this litigation, petitioner has never been served with a complaint on behalf of the injured child.

SUMMARY OF ARGUMENT

Upon the request of an injured party, the Georgia Safety Responsibility Act operates to suspend the driver's license and tag of any person who cannot post bond in the full amount of damages claimed, *or* who either cannot or will not settle the claim. In so doing Georgia interferes with the important constitutionally protected rights of property, liberty and interstate travel. A state may abridge these valuable rights only with procedures that meet the constitutional demands of due process and only for valid state purposes. The hearing provided by the Georgia Act is constitutionally inadequate because it has been interpreted to preclude any consideration of fault or responsibility for accident damages. No valid state purpose is promoted by this constitutionally inadequate procedure. At best the Act provides a special advantage to potential creditors in recovering for unproved damage claims. The Act does not forward highway safety. Other states have interpreted their respective safety responsibility acts to require a hearing on liability before license suspension. Their experiences prove the feasibility of such a requirement. Due process demands that Georgia do the same if her Safety Responsibility Act is to be constitutional.

ARGUMENT

A. OPERATION OF THE ACT

The Georgia Motor Vehicle Safety Responsibility Act applies when an accident involving death, personal injury or property damage in excess of $100.00 occurs within Georgia. Any person involved in such an accident may, at his discretion, file an affidavit with the Department of Public Safety, alleging the amount of damage claimed without further proof [Form SR-57]. See, Appendix, p. 6. Upon receipt of this form, the Department automatically and without investigation issues a "Notice of Order of Suspension" [Form SR-8]. See, Appendix, p. 9. The Notice requires the driver and/or automobile owner addressed to comply with the Act or face suspension of his driver's license and motor vehicle registration and tag (hereinafter collectively referred to as "license"). Compliance is accomplished by doing one of the following: (1) submitting a notarized release from all persons suffering personal injury or property damage of $100.00 or more as a result of the accident [Ga. Code Ann. 92A-604(4)]; or (2) posting bond in the entire amount of damages claimed, here $5,000.00 [Ga. Code Ann. 92A-A-605(d)]; or (3) filing proof of insurance coverage with the Department [Ga. Code Ann. 92A-605(c)].

An uninsured motorist whose job requires a driver's license must either obtain a release or post bond in the full amount of damages claimed, for the Act provides no hardship exception.[1] The Act favors those seeking a release by giving the uninsured motorist two advantages: (1) if he settles before the suspension date, he avoids the need to prove future financial responsibility for one year [Ga. Code Ann. 92A-615.1]; and (2) he avoids the $10.00 restoration

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[1] See *Burson v. Johnson*, 118 Ga. App. 381, 163 S.E. 2d 857 (1968) where the Georgia Court of Appeals reversed a lower court order allowing a suspended license to be used for business purposes only.

fee required to gain the return of his license [Ga. Code Ann. 92A-615.2]. The uninsured motorist thus need not purchase costly non-cancellable liability insurance for one year as proof of financial responsibility.

The uninsured driver who believes that he is not responsible for his accident and its damages and who consequently does not want to settle, faces a dilemma. Unless he posts bond in the full amount of damages, he will undergo suspension for one year [Ga. Code Ann. 92A-607(2)] in order to preserve his right to defend against the damage claim in court.[2] After a year's time, the driver may regain his license only by showing that (1) no judgment has been entered against him with respect to the damages claimed, and (2) no action is currently pending against him.[3]

B. THE RIGHTS INVOLVED IN THIS LITIGATION ARE SIGNIFICANT

Petitioner is threatened with the suspension of his driver's license, registration and tag. This driver's license, motor vehicle registration and tag are significant parts of the liberty and property protected by the due process clause of Section 1 of the Fourteenth Amendment and may be abridged only by constitutionally appropriate procedures.

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[2]Although the Act has been amended to provide for a suspension of one year [Ga. Code Ann. 92A-607 (2), as amended by Ga. Laws 1969, pp. 819-821], at the time of Petitioner's accident suspension extended for a three year period. The question of whether this amendment will be retroactive, thereby applying to petitioner, is now awaiting decision before the Georgia Court of Appeals. See *Edwards v. Department of Public Safety*, No. 45837 (argued January 4, 1971) and *Department of Public Safety v. Dobson*, No. 45921 (argued January 13, 1971).

[3]If an action is pending against the motorist, his license and registration will remain suspended until judgment is rendered in the case [Ga. Code Ann. 92A-607 (3)].

The status of a driver's license as a right deserving of constitutional protections was first most clearly stated in *Wall v. King*, 206 F.2d 878 (1st Cir. 1953):

> We have no doubt that the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty" which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law. 206 F.2d at 882.

More recently the concept of liberty mentioned in *Wall, supra*, has been buttressed by the delineation of a separate and independent constitutional right of interstate travel and free movement. *United States v. Guest*, 383 U.S. 745 (1966); *Shapiro v. Thompson*, 394 U.S. 618 (1969). Unmentioned explicitly in the language of the Constitution, this right of interstate travel and free movement is nevertheless fundamental and basic to the Constitution, *Passenger Cases*, 7 How. 283 (1849); *United States v. Guest, supra; Shapiro v. Thompson, supra.* It is a separate and individual right, not simply an aspect of the "liberty" guaranteed by the due process clause of the Fourteenth Amendment.

In *Shapiro, supra*, this Court held that a state may not condition welfare benefits upon a year's residence within the state. The right of interstate travel was held so crucial that any infringement upon it "must be judged by the stricter standard of whether it promotes a *compelling* state interest," 394 U.S. at 638 (emphasis by the Court). More recently the reasoning in *Shapiro* has been applied by several three-judge district courts to state residency requirements for bar applicants. See *Keenan v. Board of Law Examiners*, 317 F. Supp. 1350 (E.D.N.C. 1970) and *Webster v. Wofford*, ___ F.Supp. ___ No. 14253 (N.D. Ga. December 31, 1970).

Suspension of petitioner's driver's license in the present case will not eliminate his right to travel. Other means of transportation than his own private vehicle will remain avail-

able to petitioner. But a complete prohibition on interstate travel is not necessary to the application of the "stricter standard" mentioned in *Shapiro.* Indeed, one member of this court compared the right to interstate travel to that of association, terming it "a virtually unconditional right." See the concurring opinion of Mr. Justice Stewart in *Shapiro v. Thompson,* 394 U.S. at 643.

Today the social and economic circumstances of many people have made a driver's license a necessity. Petitioner's dilemma is typical. If deprived of his automobile, he will find it impossible to continue his work as a rural minister. Without the use of his automobile, petitioner's right to travel will be severely curtailed. For others, the wide-spread ownership of automobiles has resulted in an "urban sprawl" which has in turn caused a decline in every major form of mass transportation.[4]

C. THE STATE INTEREST–IMAGINED AND REAL

We recognize that the individual's right to the use of his property, his right of liberty and of interstate travel are not without limit. These individual rights must be balanced against society's need for safe highways. This Court has weighed these conflicting interests previously in passing on the constitutionality of financial responsibility acts similar to the Georgia Act under consideration here. In *Ex Parte Poresky,* 290 U.S. 30 (1933) the Court upheld a statutory scheme requiring compulsory liability insurance of all who sought driver's licenses. *Reitz v. Mealey,* 314 U.S. 33 (1941), *Kesler v. Department of Public Safety,* 369 U.S. 153 (1962) and *Perez v. Campbell,* 421 F.2d 619 (9th Cir. 1970), *cert. gr.* 39 U.S.L.W. 3206 (1970) (decision pending) considered the validity of state laws which withheld driving

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[4]Since 1945 the total use of mass transit has declined by nearly 64 percent, while the increase in overall route-miles of mass transit has been only 5 percent. Scientific American, CITIES, (New York: Alfred A. Knopf, 1966) at p. 139 ff.

privileges from those who, although adjudicated responsible for accident damages, had obtained release from such judgments through bankruptcy. In approving these statutes, *Reitz v. Mealey* and *Kessler v. Department of Public Safety* held they promoted public safety without interferring with the purpose of the federal Bankruptcy Act.

Petitioner does not question or need to question these decisions. They do not apply here. A state may use its police power to limit the individual's right to drive only if it does so in the interest of public safety. The Georgia Act restricts individual rights to property, liberty and interstate travel *without* advancing public safety, despite the stated purpose of the Act.[5]

The facts in the present case demonstrate this. Unless he posts bond in the amount of $1,057.50[6], the full amount of damages claimed, petitioner will lose the use of his driver's license and automobile for three years.[7] Because Bell cannot afford this bond, he must settle; economic necessity demands that he have the use of a car in order to keep his job. In so doing, petitioner will surrender his right to defend against what has already been judicially determined a frivolous damage claim.

Petitioner's situation is not unique. Although the Georgia Safety Responsibility Act provides for suspension of the license of the owner of a vehicle involved in an accident as well as the driver, Georgia tort law recognizes wide exceptions to an owner's vicarious liability. Unless an owner

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[5] As respondent has noted (Brief For The Respondent In Opposition, p. 19) the Act's purpose appears in its title: "An Act to eliminate the reckless and irresponsible driver of motor vehicles from the highways of the State of Georgia; . . .", Ga. Code Ann. 92A-601.

[6] Although originally $5,000.00, bond was subsequently reduced to $1,057.50 for reasons not reflected by the record in the administrative proceeding or trial court. But, the parties stipulated this as the amount of the injured child's medical expenses. Appendix, p. 17.

[7] See Footnote 2, *supra* at p. 7.

comes within three exceptions to the Georgia rule against owner vicarious liability[8], he cannot be found legally liable for damages caused by his vehicle while operated by another person. Nevertheless, because his driver's license and the registration and license plates of his auto can be suspended, the fact that he is not legally responsible for the damages offers little help. Whether *vel non* one agrees with the Georgia rule against owner vicarious liability, certainly all owners should be treated equally. No rational policy is promoted by requiring some but not all nonliable owners to pay for the damage caused by their borrowed vehicles.

If Georgia were in earnest about protecting its driving public from the effects of accidents caused by reckless, financially irresponsible drivers, it could have initiated a system of compulsory liability insurance as upheld in *Ex Parte Poresky, supra.* But because Georgia might have required *all* drivers to have liability insurance or to post security prior to licensing does not mean that it may take the seemingly lesser step of allowing vehicles to be operated without such protection until an accident occurs, only then suspending licenses if security is not forthcoming. See the dissenting opinion of Judge Friendly in *Latham v. Tynan,* ___F. 2d ___, No. 34668 (2nd Cir. December 16, 1970):

> . . . It is argued that if Connecticut could thus have barred its roads altogether to persons not assuring in advance that at least some payment would be made for injuries inflicted by automobiles owned or operated by them, it can take the seemingly less onerous

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[8]See *Younge v. Kickliter,* 213 Ga. 42, at 43 (1957) stating that an owner may be held liable only if (a) the family purpose doctrine applies, (b) the automobile is used for his benefit by an agent, or (c) he lends the car negligently. Plaintiffs in both *Roberts v. Burson,* ___ F. Supp. ___, No. 12588 (N.D. Ga. September 15, 1969) and *Chappell v. Department of Public Safety,* ___ F. Supp. ___ (N.D. Ga. 1970), appeal docketed, No. 6171, O.T., 1970, made just this argument—that they could not be held legally responsible in a court of law, yet were subject to the pressures of license suspension under the Act.

> step of allowing motor vehicles to be operated without any such protection until an accident occurs and then suspend the license of the operator and all registrations of the owner unless security is filed.
>
> . . . However valid the axiom "the greater includes the lesser" may be in mathematics, *Frost v. Railroad Comm'n*, 271 U.S. 583 (1926), and its numerous progeny, including *Shapiro v. Thompson*, 394 U.S. 618 (1969), have demonstrated it to be an exceedingly unsure guide in constitutional law. Connecticut's Motor Vehicle Financial Responsibilty Act raises questions under both the equal protection and the due process clauses of the Fourteenth Amendmend that a compulsory liability insurance statute does not. (Slip Op. at 850 ff.)

The operation of the Act does not serve its stated purposes. In *Reitz v. Mealey*, *supra*, and *Kesler v. Department of Public Safety*, *supra*, a different law was considered. That law, present also in the Georgia Act as Ga. Code Ann. 92A-605(a), provided for license suspension only where a driver had (a) been found responsible for accident damages and (b) refused to reimburse the injured party, attempting to obtain a release from his obligation by use of the federal Bankruptcy laws. This system serves the stated purposes of the Georgia Act by singling out drivers who are both reckless and financially irresponsible and denying them further use of the state's highways.

But petitioner has not been found either reckless or financially irresponsible by any agency or court. The fact of involvement in an auto accident alone is not proof of negligence. The inability to post bond set by the complaining party is inadequate proof that the driver either could not or would not reimburse an injured party once his legal liability were established by a court of law.

One out of every four drivers is likely to be involved in an auto accident each year.[9] This suggests that involvement in an accident is arbitrary and unpredictable. No one could predict that a five-year old child would ride her bicycle through a stop sign and into the path of petitioner's oncoming vehicle. And it was "chance" that petitioner became subject to the operation of the Act even *after* his accident, since the Act operates not automatically, but only where a private party initiates its operation by filing an affidavit. An Act which operates so arbitrarily as to affect only a portion of those persons involved in accidents without a showing of probable or possible negligence does not promote safe highways.

The total lack of review of even the most frivolous damage claims is the result, not of the Act itself, but of judicial interpretation. The Act's broad provision for administrative and judicial hearings [Ga. Code Ann. 92A-602] does not specify what shall be considered. The opinion of the Georgia Court of Appeals in the present case, *Burson v. Bell, supra,* excluded any consideration of fault or liability. Administrative hearings and judicial appeal are therefore limited to technical considerations: whether the accident occurred, whether there was insurance of any kind [Ga. Code Ann. 92A-605(c)], whether the exceptions as to parked vehicles or vehicles used without the owner's permission [Ga. Code Ann. 92A-606] apply, and the amount of damages. This last consideration is limited by the inability of the Director of Public Safety to lower the bond beneath the amount claimed by the party alleging injury [Ga. Code Ann. 92A-610, as amended by Ga. Laws 1964, pp. 225, 230].

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[9]In 1968 an approximate 14,600,000 accidents involved 26,000,000 of the 105,000,000 licensed drivers in the United States at that time. "Traffic Accident Facts," National Safety Council, 425 N. Michigan Ave., Chicago, 1969.

D. THE DUE PROCESS DECISIONS OF THIS COURT

The ruling of the court below is incorrect in view of recent decisions of this court touching on the question of due process. In *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and in *Goldberg v. Kelly*, 397 U.S. 254 (1970) this Court found improper the withholding of wages and welfare benefits pending subsequent due process review. The lack of due process in petitioner's case is more flagrant: he has no opportunity for a meaningful hearing either before or after suspension. In *Sniadach*, Wisconsin law provided that a defendant might move immediately to quash a garnishment in order to correct any potential abuse of process. See the dissenting opinion of Mr. Justice Black, 395 U.S. at 346 and *Family Finance Corp. v. Sniadach*, 37 Wis. 2d 163, 173-74, 154 N.W. 2d 259, 265 (1967). In *Goldberg*, where welfare benefits were at stake, review was again possible after suspension. Indeed the New York welfare procedures in *Goldberg* also provided for a pre-suspension hearing and this court considered not only whether that hearing was necessary, but also what it must include. 397 U.S. at 257.

The interests at stake here are as significant as those in *Sniadach* and *Goldberg*. In *Sniadach*, this court protected the individual's wages from a taking without a proper hearing. Petitioner now asks that his right to drive and use a car necessary to his employment receive the same due process protections.

There is no countervailing state interest which can justify suspending petitioner's driver's license without due process. It has been demonstrated above that the Georgia Safety Responsibility Act does not operate to promote public safety, despite its protestations to the contrary; rather, it serves to pressure uninsured and innocent motorists into settling frivolous claims for which they have no legal obligation simply because they cannot afford to post bond. In his dissenting opinion in *Latham v. Tynan, supra*, Judge Friendly said:

> The . . . statute requires security to be posted by an uninsured careful driver who has been the unfortunate victim of another's fault or of unavoidable accident, whereas the uninsured careless driver is placed under no such burden so long as his luck holds. The discrimination can hardly be justified in terms of keeping uninsured careless drivers off the roads, since by hypothesis the second driver is more likely to cause a liability-producing accident than the first. *The prime justification must therefore lie in providing the first driver to provide a fund that may or may not be needed to compensate for the accident that has occurred*, . . . at 851 (emphasis added).

Whether or not Georgia's protection of a potential creditor's possible future claim is valid, it does not outweigh the individual rights to property, liberty and interstate travel at stake here, *Sniadach v. Family Finance Corp., supra*, The Court has seldom upheld such complete *ex parte* action on the part of a state as that faced by petitioner here. The assertion of the other party as to an uninsured's liability is quite beyond administrative or judicial review. See *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908) (where summary seizure and destruction of food reasonably suspected to be contaminated was upheld); *Yakus v. United States*, 321 U.S. 414 (1944) with its companion case of *Bowles v. Willingham*, 321 U.S. 503 (1944) (where summary price and rent regulations were upheld under the Emergency Price Control Act of 1942 in order to prevent wartime inflation); *Fahey v. Mallonee*, 332 U.S. 245 (1947) (where a conservator was allowed to take summary action in order to preserve the delicate nature of the institution); and *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950) (again allowing summary seizure of mislabeled food by the Food and Drug Administration).

Protection of the potential creditor does not need such summary action. For the means to afford the creditor protection—license suspension—will continue to exist. Unlike the creditor in *Sniadach*, the creditor under the Georgia Act

need have no fear that his debtor can escape the Act's operation by removing himself from the state. The Georgia Act, like those in effect in nearly every other state, includes reciprocity to insure that suspension effective in one state will also be effective in any other [Ga. Code Ann. 92A-609]. The balancing test of *Sniadach* and *Goldberg*, when applied to the present case, requires a reversal of the holding of the court below.

E. OTHER STATES HAVE SATISFIED PUBLIC SAFETY AND DUE PROCESS

Georgia's Safety Responsibility Act is not unusual. Without exception the states have enacted legislation to deal with the problem of damages resulting from highway automobile accidents.[10] All acts include hearing provisions and some are similar to the Georgia Act, prohibiting any consideration of liability and fault in the review process. Some, like Connecticut [Conn. Gen. Stat. Rev. 14-114(a)], do so explicitly. Others do so through judicial interpretation. But many of the acts include "escape provisions" to soften the effect of their failure to examine liability. Two states have hardship provisions allowing limited reinstatement of drivers' licenses if necessary for work or livelihood.[11] Others allow discretionary reduction in the amount of bond if the initial amount can be shown excessive, or for other "good cause."[12]

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[10] See the discussion by Mr. Justice Frankfurter of the history of these acts in *Kesler v. Department of Public Safety*, 369 U.S. 153, 160 (1962).

[11] See Dela. § 21-2921 and the 1953 amendment thereto, and Mich. Stat. Ann. § 9.2204(1).

[12] Alaska § 28.20.270; Ark. § 75-1437; Dela. § 21-2923; Idaho § 49-1509(b); Iowa § 321A.9(1) and (2); Kan. § 8-734; Ky. § 187.370 (2); La. § 32-876; Md. § 66½ 7-214; Minn. § 170.29; Mont. Chap. 4 § 53-426; Nev. § 15 Ch. 485.250; Neb. R.R.S. § 60-513; N.J. Stat. Ann. § 39:6-29; N.M. Stat. Ann. § 64-24-58; N. Dak. C.C. Ann. § 39-16-09; Ohio § 4509.14; Okla. § 7-214; Ore. Rev. Stat. § 486.141; Penn. Stat. Ann. § 75-1409; R.I. § 31-31-5(2); S. Car. § 46-730; S.

Since the enactment of these financial responsibility laws, beginning in the 1930's, their constitutionality has been under attack, largely in state courts. The majority of state court decisions, prior to recent decisions on due process by this Court, have upheld the state acts. Many of these decisions are premised upon the "right-privilege" distinction laid to rest by this Court in *Shapiro v. Thompson*, 394 U.S. at 627, n. 6. See, *e.g.*, *Larr v. Dignan, Secretary of State*, 317 Mich. 12, 26 N.W. 2d 872, 874 (1947); *State v. Stehlek*, 262 Wis. 642, 56 N.W.2d 514, 516 (1953); *Agee v. Kansas Highway Commission Motor Vehicle Dept.*, 198 Kan. 173, 422 P.2d 949, 955 (1967) and the cases cited therein. These decisions, therefore, afford little help in the present case.

More recently, however, a change can be seen. Several state courts have interpreted the hearing provisions of their respective financial responsibility acts to allow for a consideration of liability, in order to bring the acts into line with due process requirements.

The earliest such decision is *Escobedo v. State Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P.2d 1 (1950) (*en banc*). The *Escobedo* decision merits close examination, for many subsequent cases have misread it and thus improperly relied upon it. At issue in *Escobedo* was the question of whether due process was satisfied by a hearing *after* suspension, or whether a pre-suspension hearing was necessary. That court assumed that, regardless of *when* the hearing occurred, it would include a consideration of fault and liability:

Dak. § 32-35-12; Tex. Ann. Civ. St. § 6701h-9; Utah Code Ann. § 41-12-10; W. Va. Code Ann. § 17D-310; Wisc. § 85-09(6); Wash. § 46 29.190.

> The statute did not require security of every operator who might be involved in an accident, but only of those against whom, in the opinion of the department, a judgment might be recovered. Inasmuch as the recovery of a judgment depends, in theory at least, upon culpability, it would seem that the statute, presumptively properly administered, is not open to the objection that under it the nonculpable were subject to arbitrary discrimination. 222 P.2d at 6.

The court held that a hearing after suspension was sufficient, although two dissenting members of the court were satisfied only with a pre-suspension hearing.

The assumption of the *Escobedo* court that the department would take culpability into account proved false and the California Supreme Court again found it necessary to review its act in order to make explicit the requirement that fault and potential liablility must be the basis of the department's decision to suspend a driver's license. *Orr v. Superior Court,* 77 Cal. Rptr. 816, 454 P.2d 712 (1969). This administrative action, based on a finding of potential culpability, would then be subject to later court review. Petitioner seeks no more than this in the present case.

Relying on the *Escobedo* case, the Arizona Supreme Court interpreted its act to require pre-suspension hearings to determine reasonable possibility of a damage judgment in *Schechter v. Killingsworth,* 93 Ariz. 273, 380 P.2d 136 (1963). Thus, since 1963 the Arizona Highway Department has been granting hearings before suspension to those persons so requesting. At these hearings a determination of "reasonable possibility of a judgment being rendered against the petitioner as a result of this accident" is made.[13] The effectiveness of these hearings is clear. Roughly 700 hearings were granted annually between 1963 and 1969,

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[13]See the June 3, 1969 letter of Mr. John H. Beydler, Supervisor, Financial Responsibility Service, Arizona Highway Department, Motor Vehicle Division to counsel, at p. 12a, *infra.*

while only 8 appeals were taken from the decision of the hearing officer to the appropriate state court.[14]

Similar interpretations of state financial responsibility acts have been used to avoid the charge of unconstitutionality in both New Jersey and Utah. See *Williams v. Sills*, 55 N.J. 178, 260 A.2d 505 (1970) and *Hague v. Utah Department of Public Safety*, 23 Utah 2d. 299, 462 P.2d 418 (1969).

These courts have been unimpressed by respondent's argument (Brief of the Respondent in Opposition, p. 23) that an administrative agency lacks the ability to determine the reasonable possibility of judgment because of the complex legal judgments and the need for extensive facts and evidence involved. The court in *Escobedo, supra*, effectively disposed of this objection, saying:

> The facts and legal principles governing the recovery of judgments for damages are a matter of public knowledge and provide a reasonable sufficiently certain standard to be followed by the department. 222 P.2d at 6.

The actual experience of the Arizona Highway Department provides proof that an administrative agency can accurately determine possible liability. The fact that such an administrative determination is subject to judicial review under Georgia's Act [Ga. Code Ann. 92A-602] makes remote the difficulties suggested by respondent.

Not all state courts have chosen to save their acts from constitutional infirmity through judicial interpretation. Colorado's analogue to the portions of the Georgia Act attacked here was held unconstitutional in *People v. Nothaus*, 147 Colo. 210, 363 P.2d 180 (1961). That court was unimpressed by the argument that the Colorado act promoted public safety:

> It [the act] is a device designated and intended to bring about the posting of security for the payment of a private obligation without the slightest indica-

[14] *Id.* at p. 13a, *infra*.

> tion that any legal obligation exists on the part of any person. The public gets no protection whatever from the deposit of such security. This is not the situation which we find in some states where the statutes require public liability insurance as a condition to be met *before a driver's license will issue.* Such statute protects the public. 363 P.2d at 183 (Emphasis by the court).

See also *State v. Kouni,* 58 Idaho 493, 76 P.2d 917 (1938) holding a similar state act in conflict with state and federal due process guarantees.

F. NUMEROUS FEDERAL COURTS HAVE CONSIDERED THE QUESTION PRESENTED FOR DECISION HERE.

Although Federal courts have considered cases similar to that of petitioner, the earliest decision on the exact point presented here occurred in *Llamas v. Department of Transportation,* ___, F. Supp. ___, No. 68-C-154 (E.D. Wisc. January 3, 1969). A three-judge court there dismissed the contention that the Wisconsin procedure, providing no hearing on fault or liability, violated due process. Subsequent changes in the law relied upon by *Llamas* have made it less valuable as precedent.

The *Llamas* court premised its decision on several state cases which had held financial responsibility acts constitutional on the grounds that a driver's license is a privilege rather than a right. See, *State v. Stehlek, supra* and *Larr v. Dignan, Secretary of State, supra.* Such a distinction is no longer valid. See, *Shapiro v. Thompson, supra.*

Secondly, the *Llamas* decision relied upon an improper reading of *Escobedo v. State Department of Motor Vehicles, supra. Llamas* cited *Escobedo* for the proposition that due process was satisfied by a post-suspension hearing in which fault and liability were not considered. This is not the teaching of *Escobedo.* See, *Orr v. Superior Court, supra.*

Finally, the *Llamas* decision occurred before this Court's decisions in *Sniadach v. Family Finance Corp., supra,* and

Goldberg v. Kelly, supra. Thus the court was able to hold that fiscal considerations alone were sufficient to justify the state in limiting the important rights at stake here:

> The legislature had a right to consider that such hearings would not only be time-consuming, but that the cost thereof would be exceedingly large. (Slip Op., p. 6)

Despite the fact that the decisions of this Court in *Shapiro v. Thompson, supra; Sniadach v. Family Finance Corp., supra;* and *Goldberg v. Kelly, supra,* necessitate a reconsideration of the result reached in *Llamas v. Department of Transportation, supra,* it has been cited with favor by other district courts in passing on the constitutionality of similar state safety responsibility acts.

The Georgia Act challenged here has twice been held constitutional by a three-judge district court. See *Roberts v. Burson,* ___ F. Supp. ___ No. 12588 (N.D.Ga. September 15, 1969) and *Chappell v. Department of Public Safety,* ___ F. Supp. ___ (N.D. Ga. August 17, 1970), appeal docketed, No. 6171, O.T. 1970, which appear as Appendix "D" and "E" respectively to respondent's Brief In Opposition. A two judge majority in both cases found the Georgia Act's *ex parte* suspension justified under the line of cases noted in *Goldberg v. Kelly, supra,* as an exception to the usual rule. See the discussion *supra* at pp. 14-16.

Nevertheless, one member of the *Chappell* court dissented and found a violation of due process and equal protection in the Act's suspension without a hearing:

> Under these circumstances [the facts of the present case as set forth in *Burson v. Bell, supra*] the probable effect is that the driver will be out of employment and that he and his family will be on welfare, although his only fault was his failure to obtain a liability policy at the time he obtained his license, a thing which no authority instructed him he must do . . . The writer cannot conceive of the legality of a situation wherein a driver's license is

revoked, when it appears his negligence did not contribute to the claimant's injuries. (Dissenting Opinion of Senior Judge Hooper, Slip Op., p. 4).

Most recently the Connecticut version of the Georgia Act was upheld by a two-judge majority in *Latham v. Tynan*, ___ F.2d ___, No. 34688 (2nd Cir. December 16, 1970).[15] The court approved the lower court's refusal to convene a three-judge court for lack of a substantial federal question, as required by 28 U.S.C. §§ 2281 and 2284.[16] However, the majority opinion did not stop here, but went further to reach the merits of the case as well, and in so doing determined that the Connecticut act was constitutional, citing *Kesler v. Department of Public Safety, supra*, and *Escobedo v. State Department of Motor Vehicles, supra*. These cases cannot support the result reached in *Latham*. See the discussion thereof *supra* at p. 12 ff. and p. 17 ff. respectively.

The correct analysis appears in Judge Friendly's dissenting opinion in *Latham v. Tynan, supra*. The dissent finds the questions posed substantial and makes three points which

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[15]While similar to the Georgia Act, the Connecticut act differs in at least two fundamental respects. Section 14-117 of the Connecticut General Statutes requires the Commissioner to suspend the license of *every* driver who fails to post security. However, a wider range of exceptions than those of the Georgia Act was present, including exceptions where the other driver has been convicted of negligent homicide, manslaughter, reckless driving, driving under the influence and other statutory vehicular misconduct. [Conn. Gen. Stat. Rev. 14-119]. See the opinion of the lower court in *Perez v. Tynan*, 307 F. Supp. 1235, 1237 (D. Conn., 1969).

[16]See also *Pollion v. Powell*, 47 F.R.D. 331 (N.D. Ill. 1969) (holding that the question presented here is substantial and warranted convening a three-judge court); *Cheek v. Washington*, 311 F.Supp. 965 (D.D.C. 1970) (holding no substantial federal question, but relying on *Lee v. England*, 206 F.Supp. 957 (D.D.C. 1962), which treated suspension after a discharge in bankruptcy); and *Gaytan v. Cassidy*, 317 F. Supp. 46 (W.D. Tex. 1970) appeal docketed, No. 495, O.T. 1970, 39 U.S. L.W. 3067 (where a three-judge court found no substantial federal question, although recognizing that a split of opinion existed).

apply with equal force here. *First*, the purpose of the Connecticut Safety Responsibility Act is not safety, but rather that of "prodding the first driver to provide a fund that may or may not be needed to compensate for the accident that has occurred . . .," Slip Op. at p. 851. This view finds support elsewhere in *Miller v. Anckaitis*, ___ F.2d ___, No. 18379 (3rd Cir. December 7, 1970) cert. filed, *sub nom. Anckaitis v. Miller*, No. 1309, O.T. 1970, where, in dealing with a different problem raised by the Pennsylvania Safety Responsibility Provisions, Pa. Stat. Ann. Tit. 75, § 1414 (1960), the court said of the act's purpose:

> But any driver knows that neither type of statute [e.g. compulsory liability statute and the type of statute considered here] bears any meaningful relationship to his driving habits or the protection of life and limb. Both are devices adopted to spread the risk of the statistically predictable and inevitable number of injuries resulting from motor vehicle operation.
>
> Even accepting the fiction that, as applied to drivers, motor vehicle responsibility statutes are intended to promote safety, it is just too much fiction to contend that, applied to a judgment debtor held vicariously liable for the omission of a subagent, the statute is anything but a means for the enforcement of judgments. (Slip Op. at p. 6)

Second, Judge Friendly notes that the act confers a power upon the "prospective plaintiff to force an unjust settlement upon an owner or operator who is obliged by economic necessity to keep his car on the road" and is "reminiscent of what the Supreme Court found constitutionally offensive in *Sniadach v. Family Finance Corp.*, [citation omitted]," Slip Op. at p. 852.

Third, there is so total a lack of review possible under the Connecticut act that one of two things must be true if the rule expressed in *Sniadach* is not to apply here as well. Either the interests protected by the Connecticut statute are "much stronger" than those protected by the Wisconsin garnishment statute in *Sniadach*, *or* the interests

impaired by the Connecticut statute are "much weaker" than those impaired in *Sniadach*, Id. at p. 853.

The empirical truth of Judge Friendly's observations in *Latham v. Tynan, supra,* are borne out by the facts in petitioner's case. Indeed, the facts in the present case present the strongest argument for reversing the lower court's holding. What possible good can result from depriving a man of his car, the means of his livelihood, when he has in no way shown himself an unfit driver and has specifically been found not responsible for the one accident in which he was involved? What possible good can result from allowing another private citizen to use license suspension as a means of revenge against another private citizen? In fact there is no other purpose that can be served, for petitioner has never been sued for the damages resulting from his accident and the Georgia two year statute of limitations for torts involving personal injury [Ga. Code Ann. 3-1004] has now run. If the decision of the court below is allowed to stand, petitioner will lose his driver's license and the use of his car for three years for failure to post a damage bond for an accident for which he can no longer be sued. Justice demands and due process requires that petitioner be able to make use of the trial court's finding of no liability to prevent the Georgia Safety Responsibility Act from causing him irreparable damage, while furthering no worthwhile end.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed and Ga. Code Ann. 92A-605, 606, 607, 610 and 615.1 declared unconstitutional and their ap-

plication enjoined insofar as they operate to allow license suspension without a constitutionally adequate hearing procedure.

Respectfully submitted,

Howard Moore, Jr.
Peter E. Rindskopf
Suite 1154
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303

William H. Traylor
Elizabeth Roediger Rindskopf
551 Forrest Road, N.E.
Atlanta, Georgia 30312

Attorneys for Petitioner

APPENDIX

STATUTORY PROVISIONS INVOLVED

Georgia Code Annotated, §§92A-605, 606, 607, 610, and 615.1 of The Motor Vehicle Safety Responsibility Act:

"**92A-605.** Filing of security by persons involved in accidents; effect of liability insurance; other exceptions; suspension of license for failure to comply with section; bond as proof of financial responsibility; surety requirements; judgments; non-payment, reporting of; suspensions; payments; copies; court record; pending action; unsatisfied judgment; certificate by clerk.

(a) Security and financial responsibility required unless evidence of insurance—when security determined—suspension—exceptions—Not less than 30 days after receipt by him of the report or notice of an accident which has resulted in bodily injury or death, or in damage to the property of any one person to an extent of $100.00 or more, the Director shall suspend the license and all registration certificates and all registration plates of the operator and owner of any motor in any manner involved in the accident unless or until the operator or owner has previously furnished or immediately furnishes security, sufficient in the judgment of the Director to satisfy any judgments for damages or injuries resulting from the accident as may be recovered against the operator or owner by or on behalf of any person aggrieved or his legal representative, but in no event in any amount less than the combined amount of damages, for both personal and property injury, sworn to in the report or notice of the accident filed by the aggrieved party, and unless such operator or owner shall give proof of financial responsibility for the future as is required in section 92A-615.1. If the operator or owner is a nonresident, the suspension shall apply to the privilege of operation or use of motor vehicles within this State. The Director shall not apply the provisions of this section against a resident of this State involved in an accident with a nonresident of this State when the damage is less than $300.00 except upon the

written request of any party in interest. An adjudication or discharge in bankruptcy shall not relieve the operator or owner from furnishing security as provided herein or from the other provisions of this Chapter.

(b) Notice of suspension.–The notice of suspension shall be sent by the Director to the operator and owner not less than 10 days prior to the effective date of such suspension and shall state the amount required as security, and the requirements as to future proof of financial responsibility. Where erroneous information is given the Director with respect to the matters set forth in subdivision 1, 2 or 3, subsection (c) of this section, he shall take appropriate action as hereinbefore provided, after receipt by him of correct information with respect to said matters.

(c) Exceptions.–This section shall not apply under the conditions stated in Section 92A-606 nor:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him, which provided him with liability coverage in the operation of the motor vehicle involved in such accident.

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Director, covered by any other form of liability insurance policy or bond; nor

4. To any person qualifying as a self-insurer under section 92A-616, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section unless issued by any insurance company or surety company authorized to do business in this State; except that if such motor vehicle was not registered in this State; or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or

bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company, if not authorized to do business in this State shall execute a power of attorney authorizing the Director to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident: Provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than $10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than $20,000 because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than $5,000 because of injury to or destruction of property of others in any one accident.

(d) Bond as proof of financial responsibility may be shown by a surety bond executed by the person giving proof and by a surety company duly authorized to transact business in this State or by the person giving proof of his ownership of real property and by one or more individual sureties owning real property within this State and having an equity therein in at least the amount of the bond, except that a real property bond cannot be filed in connection with the revocation of an operator's license or operating privilege. The Director may not accept any real property bond unless the real property is scheduled in an affidavit attached thereto setting forth a description of such property and the title thereto, including any liens and encumbrances and amounts thereof, market value of such sureties' interest therein, executed by the owner or owners of such interest and such bond and affidavit shows thereon that a duplicate original of such bond and affidavit has been recorded in the office of the clerk of the superior court where deeds are admitted to record in the county where the real property is located. The clerk shall provide a separate book for such purpose.

The bond shall be approved by the clerk in the same manner as a supersedeas bond is approved. The fee of the clerk for recording and approving of such affidavit and bond shall be $2.50.

(2) The Director shall not accept any such bond unless it is conditioned for payments in amounts requested by the Director subject to the maximum amounts of security as specified under the provisions of this Chapter.

(3) No such bond shall be cancelled unless 20 days prior written notice of cancellation is given the Director and cancellation of the bond shall not prevent recovery thereon with respect to any cause of action which necessitated the filing of such bond.

(4) A bond with individual sureties shall constitute a lien upon the real property of the principal and any individual surety in favor of the Governor of Georgia for the use of any holder of any final judgment, arising out of the cause of action which necessitated the filing of the bond, against the principal on account of damage to property or injury to or death of any person or persons, upon the recording of the bond in the office of the clerk of the court where deeds are admitted to record in the county where the real property is located.

(5) When a bond with individual sureties filed with the Director is no longer required under this Chapter, the Director shall, upon request cancel it as to liability for damage to property or injury to or death of any person or persons and when a bond has been cancelled by the Director he shall upon request furnish a certificate of the cancellation with the seal of the department thereon. The certificate, notwithstanding any other provisions of law, may be recorded in the office of the clerk of the court in which the bond was admitted to record.

(6) When the certificate of cancellation with the seal of the department thereon has been filed in the office of the clerk of the superior court in which the bond was admitted to record, and when there are no claims or judgments against the principal in the bond on account of

damage to property or injury to or death of any person or persons resulting from the ownership or operation of a motor vehicle by the principal arising out of the clerk of the superior court of the county in which the bond was admitted to record shall thereupon record the said certificate of cancellation which shall discharge the lien of the bond on the real property of the sureties. The cost of such recording shall be upon said sureties.

(7) If a final judgment rendered against the principal on the bond filed with the Director is not satisifed within 30 days after its rendition, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action on the bond in the name of the State against the company or persons issuing the bond.

(8) When the sureties on the bond are individuals the judgment creditor may proceed against any or all parties to the bond at law for a judgment or in equity for a decree and foreclosure of the lien on the real property of the sureties. The proceeding whether at law or in equity may be against one, all or any intermediate number of parties to the bond and when less than all are joined other or others may be impleaded in the same proceeding and after final judgment or decree other proceeding may be instituted until full satisfaction is obtained.

(e) Judgments; nonpayment, reporting of; suspensions; payments; copies.–(1) Whenever any person fails within 30 days to satisfy any judgment rendered in an action at law arising out of a motor vehicle accident, to which no appeal has been entered or motion for new trial filed, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered, to forward to the Director immediately after the expiration of said 30 days, a certified copy of such judgment and the clerk or the judge, as the case may be, shall be entitled to a fee of $1 for such services which shall be included as a part of the cost of said action at law. If the defendant named in any certified copy of a judgment reported to the Director is a nonresident, the Director shall transmit a

certification of the judgment to the official in charge of the issuance of licenses and registration certificates of the State of which the defendant is a resident.

(2) (a) The Director upon the receipt of a certified copy of such judgment, shall forthwith suspend the license and registration or nonresident's operating privilege of the person against whom such judgment was rendered, except as otherwise provided in this Chapter.

(b) If the judgment creditor consents in writing, in such forms as the Director may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Director, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof as provided in this Chapter.

(3) Such license and registration or nonresident's operating privilege shall remain so suspended and shall not be renewed nor shall any license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until such judgment is stayed, satisifed in full or to the extent hereinafter provided, subject to the exceptions provided in this Chapter.

(4) Judgments herein referred to shall, for the purpose of this Chapter only, be deemed satisfied:

(a) When $10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(b) When subject to such limit of $10,000 because of bodily injury to or death of one person, the sum of $20,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) When $5,000 has been credited upon any judgment or judgments rendered in excess of the amount

because of injury to or destruction of property of others as a result of any one accident: Provided, however, payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for herein.

(5) (a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Director shall not suspend the license and registration or nonresident's operating privilege following nonpayment of a judgment, when the judgment debtor obtains such an order permitting the payment of such judgments in installments, and while the payment of any said installments is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Director shall forthwith suspend the license and registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this Chapter.

(d) Court record; pending action; unsatisfied judgment; certificate by clerk.—At the expiration of one year from the date of the accident or one year from the date of the suspension under the provisions of this Chapter the clerk, or the judge if there is no clerk, of the several courts of this State having jurisdiction over civil cases shall upon request of an operator or owner or an authorized representative of either, check the records of such court and furnish said operator or owner or authorized representative with a certificate showing whether or not there is an action at law pending or an unsatisfied judgment on file against the said operator or owner arising out of the accident which necessitated the posting of bond or security or on which the suspension was based. The cost of such certificate shall be $1 and

shall be paid by the party requesting same. (Acts 1951, pp. 565, 568; 1956, p. 543; 1957, pp. 124, 125; 1958, p. 694; 1959, p. 341; 1963, pp. 593, 594-595; 1954, pp. 225, 227; 1969, pp. 819, 820.)

92A-606. Further exceptions to requirement of security.—The requirements as to security and suspension in section 92A-605 shall not apply:

1. To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

2. To the operator or the owner of a motor vehicle legally parked at the time of the accident;

3. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission; nor

4. If, prior to the date that the Director would otherwise suspend license and registration or nonresident's operating privilege under section 92A-605, there shall be filed with the Director evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident. (Acts 1951, pp. 565, 570.)

92A-607. Duration of suspension of license or registration.—The license and registration and nonresident's operating privilege suspended as provided in section 92A-605 shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. Such person shall deposit and file or there shall be deposited and filed on his behalf the security and proof of responsibility required under section 92A-605; or

2. One year shall have elapsed following the date of such suspension and evidence satisfactory to the Director has been filed with him, during such period no action for damages arising out of the accident has been instituted; or

3. Evidence satisfactory to the Director has been filed with him of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision 4 of section 92A-606. Provided, however, in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the Director shall forthwith suspend the license and registration of nonresident's operating privilege of such person defaulting which shall not be restored unless and until (1) such person deposits and thereafter maintains security as required under section 92A-605 in such amount as the Director may then determine, and such person files proof of financial responsibility for the future as required in section 92A-615.1, or (2) one year shall have elapsed following the date when such security and such proof of financial responsibility was required and during such period no action upon such agreement has been instituted in this State. (Acts 1951, pp. 565, 571; 1963, pp. 593, 596; 1969, pp. 819, 821.)

92A-610. Form and amount of security.—The security required under this Chapter shall be in such form and in such amount as the Director may require, but not in excess of $10,000 where only one person was injured or killed, $20,000 where more than one, nor $5,000 for property damage, nor in any event in an amount less than the combined amount of damages for both personal and property injury sworn to in the report or notice of the accident filed by the aggrieved party as specified in section 92A-605. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Director or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons: Pro-

vided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

The Director may reduce the amount of security ordered in any case but in no event to an amount less than the combined amount of damages for both personal and property injury sworn to in the report or notice of the accident filed by the aggrieved party, within six months after the date of the accident, if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of section 92A-611.

The Director may increase the amount of security in any case but in no event to an amount less than the combined amount of damages for both personal and property injury sworn to in the report or notices of the accident filed by the aggrieved party, within six months after the date of the accident, if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of section 92A-611.

The Director may increase the amount of security in any case where subsequent information indicates that the original amount of security ordered would not be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner. (Acts 1951, pp. 565, 573; 1956, pp. 543, 560; 1957, pp. 124, 128; 1958, pp. 694, 696; 1963, pp. 593, 598; 1964, pp. 225, 230.)

92A-615.1. Duration of future proof of financial responsibility.—In all those situations under this Chapter in which proof of financial responsibility for the future is required, such proof must be maintained for a one-year period:

Provided, however, that the second time any person is required by this Chapter to file proof of financial responsibility then such proof must be maintained for a three-year period. (Acts 1963, pp. 593, 600; 1964, pp. 225, 231.)

Arizona Highway Department Motor Vehicle Division
Phoenix, Arizona 85007
June 3, 1969

Elizabeth Roediger Rindskopf
Managing Attorney
Emory Neighborhood Law Office
551 Forrest Road N.E.
Atlanta, Georgia 30312

Dear Madam:

Your letter of May 29, 1969 addressed to Mr. David H. Campbell, Superintendent of Motor Vehicle Division, has been referred to me for reply.

1. How long has Arizona held hearings on liability *before* license suspension;
   a. The State of Arizona has been holding hearings since March 27, 1963 in accordance with Title 28-1122 of the Arizona Revised Statutes and the Arizona Supreme Court decision, Schecter vs. Killingsworth.
2. What is the procedure in such a hearing (e.g., its length, who officiates);
   a. After request for a hearing is made by the petitioner a date and time is set at the Financial Responsibility office for said hearing. A trained Hearing Officer conducts the hearing. The length of the hearing varies from thirty minutes to two hours depending on the nature and seriousness of the accident. The purpose of the hearing is to determine whether or not, in the opinion of the Hearing Officer, there is a reasonable possibility of a judgment being rendered against the petitioner as a result of this accident. The Hearing Officer has at hand the accident report forms of both the petitioner and the adverse party as well as statements of witnesses, the police report, and all other pertinent data concerning the accident.

If the police report indicates that citations were issued to the petitioner or the adverse party, the Hearing Officer—in the presence of the petitioner—gets the disposition of the citation from the local court and enters the disposition accordingly on the hearing work sheet. The Hearing Officer at that time takes the statements of the petitioner, verbatim, of how the accident occurred and records it on the work sheet and additional paper, if needed. The Hearing Officer is required to have the petitioner sign any additional statements attached to the work sheet. After consulting with the petitioner and his counsel, the Hearing Officer notes on his sheet, whether or not the police diagram is accurate. If it is, he so notes on the work sheet. If the petitioner disagrees with the diagram on the work sheet, the Hearing Officer then asks the petitioner to draw, as best he can, his impression of the accident. On the face side of the hearing work sheet (copy enclosed) the officer then makes any remarks he deems pertinent to making his decision. If the officer determines there may be a reasonable possibility of a judgment, the effective date of the suspension is extended for another ten (10) days from the date of the hearing to allow the petitioner time to get releases or work out agreements with the adverse parties. If the Hearing Officer makes the determination that there is no reasonable possibility of a judgment, he then closes the file by virtue of A.R.S. 28-1122. If the petitioner is aggrieved at the ruling of the Hearing Officer, he is advised he has ten (10) days in which to appeal the decision to the Superior Court for a Trial de Nova. I might add here that only eight (8) appeals have been made from the decisions of the Hearing Officer at Financial Responsibility Service—all eight have been quashed by the courts.

3. How many such hearings have been requested per year since they were first made available;

a. In the three years that hearings have been held at this department we have averaged approximately 700 hearings per year. This number is increasing at a very rapid rate due to attorneys and the general public becoming more cognizant of the fact that this procedure is available to them.

4. Have the hearings been burdensome on the Arizona Highway Department;

a. Up until the past ten or twelve months the hearing process has been relatively easy to manage with one Hearing Officer. However, with the increased request for hearings, I anticipate that an additional two (2) Hearing Officers will be needed by the end of 1969.

5. How many additional staff personnel are needed to provide such hearings;

a. Please refer to No. 4 answer.

6. What additional cost has been caused by the hearings.

a. Until the present time no additional cost has been incurred due to the fact that the Hearing Officer also does evaluations and other chores assigned him in the department. However, in the future I anticipate that additional costs will be incurred as more Hearing Officers will have to be employed at a wage schedule to be determined by the Superintendent.

We find that the provision in the Arizona Revised Statutes providing for these hearings has been most satisfying to persons involved in accidents when no insurance was claimed and there was an obvious liability on the adverse party. We anticipate that our methods of conducting hearings will be adopted by most of the other states in the near future.

We are enclosing a copy of General Order No. 68 (Rules and Regulations governing Hearings) as well as the work sheets used at the hearing for your perusal.

I hope that this information will assist you in your plans for providing for hearings in the State of Georgia. Any

help or assistance that this office can give you will be most gladly delivered upon request.

Yours very truly,

/s/ John H. Beydler, Supervisor
Financial Responsibility Service

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 5586

PAUL J. BELL, JR.,

Petitioner,

v.

R. H. BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

On Sunday afternoon, November 24, 1968, Georgia licensee Paul J. Bell, Jr., was driving his station wagon in Sparks, Georgia, when he collided with a bicycle being ridden by five-year-old Sherry Capes. Bell was uninsured (A. 4-5). An accident report was filed with the Georgia Department of Public Safety (Department) on behalf of the child's parents, and it was indicated that

the child had been substantially injured and that Bell had made no effort to settle the matter (A. 3-5). As required by the Department, the attending physician's report and the affidavit of the father swearing that he believed he was entitled to recover the amount of damages stated were subsequently filed (A. 6-7). These documents were prerequisites to the Department's demand for security, to substantiate the claim and evidence its credibility. Their contents indicate their purpose (A. 6-7 [Forms SR-57 and SR-57A]).

Thereafter, Bell was advised by the Department that he was required to file an accident report, and notice of insurance if insured, and that other documents were required if damage claims were involved (A. 8). At the same time, he was notified of the claim filed by the child's parents and ordered to deposit security or submit a general or conditional release, file proof of financial responsibility for a period of one year in the future, and pay a ten-dollar restoration fee (A. 9). He was advised that if he did not comply with one of the alternatives, his license, registration certificates, and plates would be suspended thirty days hence, i.e., on May 10. (This was later extended to June 10.) However, proof of liability insurance in effect at the time of the accident would avoid suspension and the other requirements altogether (A. 9).

Bell's attorney asked the Department for a hearing, claiming the accident was unavoidable (A. 10). The hearing was set for May 7 and Bell and his attorney were advised that the scope of the hearing would include whether Bell was involved in the accident, whether he had complied with the provisions of the applicable law, and whether he came within any of the provisions of the

law. They were also notified that an appeal could be taken from the Department's ultimate decision (A. 11). Due to the nature and purpose of the hearing, the claimants were not notified by the Department since it would not affect them. The hearing resulted in the decision that nothing was presented by Bell which would avoid the earlier order of suspension. That is, he did not show proof of liability insurance, or a general or conditional release from the claimants, or self-insurance, or that his vehicle was legally parked at the time or was being used without his permission, or that he had posted one of the types of acceptable security. Nor did he show that the amount claimed was excessive. (The amount required, $5,000, included $1,057.50 as costs incurred to the date the physicians signed their statement in March 1969.) However, Bell was given an additional thirty days in which to meet one of the alternatives offered or to undergo suspension (A. 12).

Appeal to the Superior Court of Cook County was filed on Bell's behalf, and the matter was set down and heard in May, before the date scheduled for suspension (A. 14). Despite the fact that neither claimants nor the injured child were parties to the action, and despite the fact that they were not present as witnesses or otherwise, the court made a finding that Bell was not at fault in the accident. So finding, the court ordered that suspension not occur until the filing of a suit against Bell, and in that event only if he did not then comply with the financial responsibility laws (A. 15). The record does not reflect that a due process argument was ever raised or considered by the court in making its determination. Bell apparently simply convinced the court, *ex parte*, that he was not at fault, and the court determined that

suspension should not occur unless and until suit was filed, despite noncompliance with the safety responsibility requirements.

The decision was appealed by the Department to the Court of Appeals of Georgia (A. 19), and since the proceeding before the Superior Court was not recorded, the Department and Bell entered into a stipulation in lieu of a transcript (A. 16-18). This method of preserving the record is provided in Ga. Laws 1965, pp. 18, 26 (Ga. Code Ann. § 6-805[g]). The stipulation set out, among other things, that the court made a finding of freedom from fault and that the Department argued the decisions of three Georgia cases which held that the financial responsibility requirements as set out, had to be met before licenses could be restored. One of the three cases specifically approved the Department's refusal, in administering the safety responsibility law, to consider evidence of who was responsible for the accident. *Turmon v. Department of Public Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967).

The suspension did not, therefore, become effective, and Bell has not experienced any suspension to date. Neither has he complied with the requirements in any manner so as to avoid suspension, and he has not obtained a release from claimants nor evidenced any attempt to do so though he steadfastly maintains he is not at fault. The one year period for proof of financial responsibility has now expired, so Bell would not be required to file such proof, even if the Court of Appeals decision were affirmed. On the other hand, the three-year suspension which was to begin on June 10, 1969, will not expire until June 10, 1972, so that Bell could still be subject to it if the Court of Appeals decision is af-

firmed. The three-year period required by law, which since Bell's order of suspension has been reduced by amendment to one year, is not meaningless as Bell would have the Court believe. Although actions for injuries to the person shall be brought within two years after the right of action accrues, Code of Georgia of 1933, Section 3-1004, as amended, Ga. Laws 1964, p. 763, and a father may recover for torts committed to his child, Code of Georgia of 1933, Section 105-107, the statute is tolled for infants until after the disability of infancy is removed, Code of Georgia of 1933, Section 3-801. This provision is specifically made applicable to actions for torts. Code of Georgia of 1933, Section 3-1005.

The appeal, based on three claimed errors of the trial court, (A. 20), was filed in the Georgia Court of Appeals rather than in the Supreme Court of Georgia. The latter court has jurisdiction "in all cases that involve the construction of the Constitution of the State of Georgia or of the United States, . . .; in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question; . . ." Constitution of the State of Georgia of 1945, Art. VI, Sec. II, Par. IV (Ga. Code Ann. § 2-3704). Jurisdiction was retained by the Court of Appeals, evidencing the fact that the case did not draw into issue the Fourteenth Amendment due-process question here advanced. It was argued by Bell, in his state-court brief, that the due process clause required the hearing to include the question of fault and liability. Such a posture does not raise the question in the record, as the briefs are not part of the record. *Rawls Bros. Co. v. Paul,* 115 Ga. App. 731, 155 S.E.2d 819 (1967); *Windsor v. Southeastern Adjustor,* 221 Ga.

329, 144 S.E.2d 739 (1965). The proper raising of constitutional questions is discussed in Respondent's Memorandum on Posture of Federal Question, filed in this Court on November 26, 1970. Nor did Bell ask that the case be transferred to the Supreme Court of Georgia because of a constitutional question.

The Court of Appeals reversed the judgment of the Superior Court on March 4, 1970 (A. 23-25), *Burson v. Bell,* 121 Ga. App. 418, 174 S.E.2d 235 (1970). It held that suspension was required by the facts, and that fault or innocence is an irrelevant factor. Only compliance with the financial responsibility law would warrant reinstatement. Further, delaying suspension until a damage suit is instituted is contrary to law. The Court apparently did not accept the argument that due process was denied if fault were not considered, nor did it regard the argument as requiring transfer of the question to the Georgia Supreme Court. Motion for rehearing was denied (A. 26), and a writ of certiorari requested of the Supreme Court of Georgia was also denied (A.27). Remittitur to the superior court was stayed on May 26, 1970, by the Court of Appeals, pending application to the Supreme Court of the United States for writ of certiorari.

SUMMARY OF ARGUMENT

The purposes of the Motor Vehicle Responsibility Law, portions of which are here attacked as a denial of due process guaranteed by the Fourteenth Amendment, are relevant to a consideration of the charge made and indicate the broad and legitimate general welfare intent of the legislation.

Georgia's concern with the type of safety and financial responsibility in motor vehicle regulation here subject,

goes back to 1945. The development and refinement of the law since that time evidences the continuing effort to make the law responsive to the needs of the public in a burgeoning, motor-vehicle-geared community. The rights of the individual motorist are protected and have not, by virtue of the requirements of the law attacked, been sacrificed. The aspect of the procedure complained of, when viewed in terms of the total procedure and in the light of the objective sought to be achieved, is not a deprivation of constitutionally-protected due process. It is rather a reasonable means utilized in the exercise of the State's police power.

As respects Petitioner, the application of the motor vehicle responsibility law did not violate his rights. He was afforded an agency hearing at which the relevant facts were found and the proper conclusion reached, that is, that he was subject to the provisions of the Act, which had placed a condition on the use of his licenses. He also was afforded judicial review before the date of suspension had arrived. The almost universal state vehicle responsibility statutes have withstood the test of constitutional attack in both state and federal courts over a long period of years. Some states require compulsory insurance as a condition of licensing. Others require payment for accidents only after judgments have been rendered, with suspension as an alternative. Georgia has selected a moderate ground after years of trial, as the opportunity to own and operate a motor vehicle on the public highway without financial responsibility is given to those who choose to bear the risk of involvement in an accident. Such leniency does not become a lack of due process when a motorist is required to prove he is financially responsible.

ARGUMENT

A. PURPOSE OF THE LAW CONCERNING WHICH PORTIONS ARE ATTACKED AS A DENIAL OF FOURTEENTH AMENDMENT DUE PROCESS GUARANTEES.

The law which Petitioner attacks is not new nor untried in Georgia. In 1945, the "Motor Vehicle Safety Responsibility Act" was passed. As included in the official title of the Act, it was an Act:

> "To empower the Director of Public Safety to cancel driver's licenses under certain conditions; to provide for reinstatement of such licenses upon proper showing; to provide for appeals; to provide penalties for violations of this Act; to repeal conflicting law; and for other purposes." Ga. L. 1964, pp. 276-278.

In Georgia, the title of an Act is particularly important because the Constitution provides that:

> "No law shall pass which refers to more than one subject matter, or contains matter different from what is expressed in the title thereof." Constitution of the State of Georgia of 1945, Art. III, Sec. VII, Par. VIII (Ga. Code Ann. § 2-1908).

Unity of purpose is what this constitutional provision requires of legislative enactments. *Williamson v. Housing Authority of Augusta,* 186 Ga. 673, 679, 199 S.E. 43 (1938). The object is to protect the people against covert or surprise legislation. *Bray v. City of East Point,* 203 Ga. 315, 317, 46 S.E.2d 257 (1948). Thus it has been held on numerous occasions that the title is to indicate the general object of the Act and the subject matter to be dealt with. *Williamson v. Housing Authority of Augusta, supra; Cady v. Jardine,* 185 Ga. 9, 193 S.E. 869 (1937).

This requirement is embedded in all of the acts here involved, and attention to their titles reveals the object of each act. So, for example, the 1945 Act generally involved the cancellation and reinstatement of driver's license under certain conditions.

That law was repealed in 1951, and in its place "an Act to provide for the giving of security by owners and operators of motor vehicles" was adopted. Ga. Laws 1951, p. 565. In 1956, the 1951 Act was amended substantially, but as its title shows, one of the objects of amendment was ". . . to strike the title in its entirety and insert in lieu thereof a new title specifying the purposes of said Act." The purposes were set out at the beginning:

> "An Act to eliminate the reckless and irresponsible driver of motor vehicles from the highways of the State of Georgia." Ga Laws 1956, pp. 543-545.

That expressed statement of purpose has not been changed since, despite a number of amendments to the underlying 1951 Act.

The references to the Act in later amendments, including the last one, clearly indicate the frame of coverage and applicability which the legislature intended. So, in 1957 the title of the amending Act commenced:

> "An Act to amend an Act providing for the procedure under certain circumstances involving motor vehicle accidents for giving security by the owners and operators of motor vehicles and for the suspension and revocation of licenses and registration privileges. . . ." Ga. Laws 1957, pp. 124-125.

The 1958 General Assembly referred to "an Act providing for the giving of security by owners and operators of motor vehicles, . . ." Ga. Laws 1958, p. 694. Thereafter, this general description of the basic 1951 Act was used

in the title of the amendatory acts, to designate in compliance with the Georgia Constitution what the object of the act was. See Ga. Laws 1959, p. 341; Ga. Laws 1964, p. 225; Ga. Laws 1965, p. 456; Ga. Laws 1967, p. 775; Ga. Laws 1968, p. 430; Ga. Laws 1969, p. 819. The latter two amendments added the word "certain", describing the parent Act as one "providing for the giving of security by owners and operators of certain motor vehicles." This acknowledges the exemptions or exceptions provided.

Thus, it is abundantly clear from a study of the substantive titles relating to the law now partially challenged, that the legislature intended that every owner and operator of a motor vehicle be required to give security for accidents, unless he were excepted by obtaining liability insurance or by non-involvement in collisions resulting in injures or property damages claimed.

The broad coverage demonstrates the General Assembly's concern with the necessity to impose responsibility upon those who cause motor vehicles to traverse the highways. The responsibility was twofold and interlocking. As stated in 1956, the purpose was "to eliminate the reckless and irresponsible driver of motor vehicles from the highways from the State of Georgia." Not only was the legislature concerned with taking off the roads those who drove recklessly, disregarding the rights and safety of others, but also those who were irresponsible financially. It becomes evident, from an examination of the Act and its amendments, that the State imposition of financial requirements was intended both to advance public safety by reaching those who were judgment proof and therefore probably less careful and in reaching also those who, judgment proof or not, would fail or refuse to meet the

financial obligations arising from accidents. The general welfare of the public using the highways, by way of protection from uncompensated injury or damage, prompted the legislation and kept it in force, as did also the desire to concretely encourage careful driving.

The evolvement of the substantive provisions of the law bears witness to the continuing concern of the State with fostering safety through greater care and universal financial responsibility to the public by motorists. The State has attempted to provide or suggest a number of options to the motorist. He may select whichever alternative best suits him with respect to financial responsibility, but the State has precluded total unpenalized avoidance of this responsibility. The threat of license suspension, which is the "last straw" alternative, faces the uninsured driver who would tend to drive less carefully because he knows he is judgment-proof and therefore has little to lose in the event of an accident. It also looms as a threat to uninsured motorists who refuse to give evidence that they are ready, willing, and able to accept financial responsibility when they or their vehicles are involved in accidents.

The law imposes a condition on the licenses, and this condition is as much a part of a driver's license, registration and plates as are the requirements to abide by the traffic laws or the implied-consent law or the inspection laws. In this case, however, the condition upon which continued use of a driver's license, registration certificate, and plates depends, is the acceptance of responsibility. An applicant has the option of obtaining liability insurance when he receives his driver's license or registration and tags, or he may wait to give evidence of his financial responsibility until the event of an accident in which he

is involved. For persons who are never so involved, of course, the State's objective of accident-free highways is achieved and they need not prove their acceptance of responsibility. If no one is ever injured or damaged as a result of their operating or owning a motor vehicle, the State is not concerned with their assuming financial responsibility, although, of course, the State seeks to control any reckless driving on their part by other means. Instead of imposing financial responsibility for their recklessness, the State imposes speeding and other motoring prohibitions and inspection laws so as to discourage unsafe driving even when no one else is involved. The financial responsibility aspect of motor vehicle regulation, however, is geared specifically to protecting members of the public from the greater proneness of the financially irresponsible to reckless driving, by requiring evidence of financial responsibility when an accident has occurred, and by removing from the roads, at least for a period of time, those persons who refuse or fail to offer proof of financial responsibility for the present and for a specified period in the future.

The condition on licensing is not so strict in Georgia that a licensee must demonstrate his financial responsibility by a purchased policy of liability insurance. The condition imposes only a delayed requirement, which may never rise in the life of a licensee. The requirement that he show proof of present and future financial responsibility is triggered only by a licensee's involvement in an accident. Whether he is to blame is not the point. The State is justly concerned with his ability and willingness to pay for injuries and damages which have now occurred and which may occur in the future. Consequently, the State simply defers requiring proof until the occurrence

of a particular event, and that event is the licensee's involvement in a damage-resulting collision. By delaying activation of the requirement, the State avoids a system of compulsory-liability insurance at the outset, which otherwise might be its obligation in view of the vast number of automobiles traveling on the highways and the great incidence of collision among them. Georgia has thus been lenient in requiring proof of financial responsibility. It has acted in a restrained manner, forestalling the requirement for evidence until and unless an accident occurs.

The selection of this triggering event was not arbitrary and is not unrelated to the legitimate State purpose attempted. It is reasonable to expect, when an accident occurs and personal and/or property damage result, that someone is legally liable. Common knowledge shows, however, that oftener than not, both parties contributed some fault to the happening. This has been grappled with legally by such doctrines as "last clear chance," "contributory negligence," "comparative negligence," and so on. Georgia treats the matter thusly in its tort law:

> "If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way contribute to the injuries sustained." Code of Georgia of 1933, § 105-603.

As to the care required of a child, Georgia tort law provides:

> "Due care in a child of tender years is such care as its capacity, mental and physical, fits it for exercising in the actual circumstances of the occasion and

> situation under investigation." Code of Georgia of 1933, § 105-205.

It is further provided in Code of Georgia of 1933, § 105-205:

> "In a suit by an infant, the fault of the parent or of custodians selected by the parents, is not imputable to the child."

In *Kennedy v. Banks*, 119 Ga. App. 831, 169 S.E.2d 180 (1969), an action for the wrongful death of a seven-year-old, the Court held no error in certain instructions to the jury, viewed in the light of the whole charge:

> "(1) 'One would not be justified in assuming that a child would exercise the same degree of care for his safety as an adult under the circumstances' (2) 'Nor is one justified in presuming that a child near the highway will remain in a place of safety.' Immediately following these excerpts, the court continued, 'I further charge you that motorists owe very young children a greater duty than they owe to normal adults. The question of whether the defendant used the legally required care, the degree of legally required care under law of the facts and circumstances in this case is a question for you, the jury, to determine, and the court makes no intimations whatsoever in this regard.' Elsewhere in his charge, the court clearly instructed the jury that the defendant driver was required to be in the exercise of ordinary care under all the circumstances disclosed by the evidence." *Id.* at 831-832.

The injured child in the instant case was five years old and was riding a bicycle at the time of the accident. The intricacies of facts, circumstances, relative degrees of care, etc. in this case illustrate graphically the wisdom of the legislature in choosing involvement itself as the event which activates the requirement for proof of finan-

cial responsibility, leaving legal liability to judicial determination.

B. HISTORY OF GEORGIA'S MOTOR VEHICLE RESPONSIBILITY LAW.

The history of the law illustrates that several cut-off points and variations have been tried and discarded in favor of the one controlling presently and at the time Petitioner and the young child collided.

The 1945 Act authorized the Public Safety Director to suspend the driver's license of a person failing to pay a judgment in a case arising out of the operation of a motor vehicle, within thirty days after the judgment became final. The suspension continued until the licensee obtained liability insurance for the future or satisfied the judgment or entered an agreement by which the injured party released the liable party from compliance with the Act, or seven years elapsed. Ga. Laws 1945, pp. 276-278.

The 1945 Act was repealed in 1951, and the statute now in force, as amended, was enacted. Ga. Laws 1951, pp. 565-578. Upon the receipt of the report of accident, a licensee was required to post security, the amount of which was determined by the Director to satisfy any judgments "as may be recovered". He need not post security if there was insurance, or a bond, or a release or final adjudication of non-liability or agreement to pay, or self-insurance, or no injury or damage, or the vehicle was legally parked, or as to the owner, the vehicle was operated without permission. Where security was required, failure to post the same resulted in suspension of driver's license and registration certificate and plates. The suspension would continue until the security was

posted, or no action was instituted for one year, or a release from liability or adjudication of non-liability or written agreement for payment in installments was presented. Thus, the general public was protected from uncompensated injuries by virtue of the inducement to show good faith and ability to pay in case licensee were deemed legally culpable. The general public was also protected from future accidents involving the uninsured motorist, by the State's efforts to pursuade him to obtain insurance and by the State's removal of him from the roads for a period of time after he failed to show financial responsibility.

The Act also provided for a three-year revocation upon the conviction of certain driving offenses, but allowed reinstatement after thirty days if financial responsibility for the future were shown and maintained for three years.

In 1956, the general purpose of the Act was enunciated in the title. Ga Laws 1956, pp 543-562, *supra*. Suspension was to occur unless or until security was posted "sufficient in the judgment of the Director" to satisfy any judgments "as may be recovered; provided that the Director shall dispense with the foregoing requirements on the part of any operator or owner who is undisputedly free from any liability." Section 9. Added at this time were two more alternatives to posting cash security; a surety-company bond and a real-property bond became acceptable. Section 11. Suspension was also authorized if a final judgment was not paid in thirty days. This latter addition revived the suspension provisions for unpaid judgments, which had been the only circumstance under which suspension would occur by virtue of the 1945 Act. Proof of future financial responsibility became required not only in the case of convictions, but also where pleas

of guilty or forfeiture of bond was made. A significant addition permitted the Director to increase the amount of security, where previously he had only been authorized to reduce it.

In 1957 and 1958, the limits of liability or security were increased. Ga. Laws 1957, pp. 124-129; Ga. Laws 1958, pp. 694-697. An amendment in 1959 did not affect the provisions here attacked. Ga. Laws 1959, pp. 341-342.

In 1963, in lieu of the provision that the Director should dispense with the security requirements on the part of any operator or owner who is undisputably free from any liability, a minimum amount was set, and in addition to security, the licensee was to give and maintain proof of future financial responsibility. Thus the requirement for future proof was extended to all those who became obligated to post security. The duration of future proof of financial responsibility was set at three years, and the period for holding security was increased from one year to two years. Ga. Laws 1963, pp. 593-601.

The 1964 Act changed the minimum amount of security from $500 to an amount not less than the claimed amount of damages for personal and property injury sworn to in the report or notice of the accident by the aggrieved party. The effect was that the Director could not require a lower amount than the amount claimed, and on the other hand he was not held to $500 if the amount claimed was less than that. The duration of proof of future financial responsibility was decreased from three years to one year. Ga. Laws 1964, pp. 225-232.

The acts of 1965 and 1967 made changes that are not

pertinent to the current discussion. Ga. Laws 1965, pp. 456-458; Ga. Laws 1967, pp. 775-776.

In 1968, there was established a violation point system for assessment of points for all the various moving traffic violations committed in Georgia by Georgia drivers. Ga. Laws 1968, pp. 430-434. This Act tied in to those provisions of the responsibility law which dealt with reinstatement after thirty days from revocation for conviction, guilty plea, or bond forfeiture, if the licensee qualified as a self-insurer or filed proof of liability insurance.

The 1969 Act decreased the duration of suspension except under certain circumstances from three years to one year. Ga. Laws 1969, pp. 819-824.

C. THE OPERATION OF THE MOTOR VEHICLE RESPONSIBILITY LAW AT PRESENT AND AS AFFECTING PETITIONER.

The law to date, and in effect at the time of the accident here subject, requires a report to be filed by every operator involved in an accident resulting in injury or damage to an extent of $100 or more. If, in addition to the report, property damage and personal injury is claimed by the substantiated affidavit of a party, the law requires filing proof of financial responsibility. This may take the form of existing liability insurance or bond, cash security in the amount claimed, surety company bond or real property bond in the amount claimed, or certificate of self-insurance if person has ten or more vehicles registered in his name. Proof of financial responsibility for a one-year period in the future is also required. (The period prescribed was three years when imposed on Petitioner). Section 5 (Ga. Code Ann. § 92A-605).

Security and proof of future financial responsibility is not required if the licensee has liability insurance or bond in effect at the time of the accident, or the person is a self-insurer and the requirements do not obtain if no injury or damage was caused to the person or property of another, or none are claimed, or the vehicle was legally parked at the time of the accident, or as to the owner, the vehicle was being operated without permission.

The claim which puts in motion the applicability of the law is a claim which is filed with the Department of Public Safety against the motorist, for personal injury and/or property damage. It must be made under oath and state that the claimant believes himself entitled to recovery of the stated amount from the motorist and that said motorist has not been released nor has any judgment been rendered against the claimant as a result of the accident (Form SR-57, A.6). The statement must also describe the family and employment status of the injured party and include a statement describing the injuries and other facts relevant to the injuries by the attending physician (A.7). The security required cannot exceed $10,000 for bodily injury to or death of one person in any one accident, or $20,000 for bodily injury to or death of two or more persons in any one accident, or $5,000 for damage to property in any one accident. This is in conformity with the uninsured motorist provisions of motor vehicle liability policies as required in Georgia. Ga. Laws 1963, p. 588, as amended 1964, p. 306; 1967, pp. 463, 464; 1968, pp. 1089, 1091; 1968, pp. 1415, 1416 (Ga. Code Ann. § 56-407-1). Subsection (d) provides:

> "A motor vehicle shall not be deemed to be an uninsured motor vehicle within the meaning of this

> section when the owner or operator of such motor vehicle has deposited security, pursuant to the provisions of Section 9 of an Act providing for the giving of security by owners and operators of motor vehicles [Chapter 92A-6] in the amount of $10,000 where only one person was injured or killed, $20,000 where more than one, or $5,000 for property damage."

The two provisions go hand in hand; the security required cannot exceed the minimum insurance designated by the State.

It is pertinent to note that the amount claimed may be increased or reduced by the Director. Although the amount is not to be reduced below the amount claimed, this has been construed to mean an amount substantiated in the Director's judgment. So in Bell's case, the initial claim was for $10,000 or more," but security was required in the amount of $5,000. (A. 6, 7, 9). Also, since the Director may require the reporter of the accident to file additional relevant information over and above what is asked for in the report form, a fraudulent claim could be revealed if challenged by the uninsured motorist.

Thus, security and proof of future financial responsibility is only required when the motorist is involved in an accident in which injury or property damage or both occurred, and the aggrieved person files a claim stating he believes he is entitled to recovery against the motorist verified, and no release from liability is filed or settlement accomplished, and the vehicle was not legally parked at the time of the accident, and the motorist is not a self-insurer or possessed of other covering insurance policy or bond. This, it is submitted, constitutes the "reasonable possibility of judgment", which Petitioner alleges he

should be assured of before he is required to post security.

Before suspension occurs, ten days' notice is given to the motorist so that he has an opportunity to post security and future proof of financial responsibility. Section 5(b) (Ga. Code Ann. § 92A-605[b]). He also has an opportunity for a hearing on whether he must post security and proof, and in Petitioner's case, the hearing was held before the suspension became effective. Appeal may be taken to the superior court for a *de novo* hearing, with or without jury. The issues are whether the applicant or his vehicle were involved in the accident; whether he complied with the provisions of the law; or whether he comes within any of the exceptions of the law; whether the amount of damages is excessive would also be pertinent. If the motorist fails to post security and proof of future financial responsibility, his licenses will be suspended, but only until he files security and proof of financial responsibility for the future or one year elapses and no action has been instituted, or until a release from liability, final adjudication of non-liability, or duly acknowledged written agreement for payment in installments is filed. Thus, the option to meet the requirements is continually left open for the uninsured motorist. Section 7 (Ga. Code Ann. § 92A-607). If a suit is pending, the suspension continues until judgment is paid or the motorist is adjudicated non-liable. Section 5(f) (Ga. Code Ann. § 92A-605[f]). If, of course, a judgment is obtained against an uninsured motorist who refuses to post security, non-payment after thirty days of at least a certain portion of the judgment continues the suspension or instigates it if it has not commenced previously. Section 5(e) (Ga. Code Ann. § 92A-605[e]).

In the event the motorist does post security in some

form and no action is commenced within two years after the date of deposit, it is returned. Section 10 (Ga. Code Ann. § 92A-610). It can, of course, be returned earlier if a release or final adjudication of non-liability or installment agreement is evidenced to the Director.

Suspension also may occur upon conviction or plea of guilty or forfeiture of bond with respect to certain motor vehicle offenses. Section 7-A (Ga. Code Ann. § 92A-608). The one year period may be shortened to approximately one month if the operator qualifies as a self-insurer, obtains liability insurance, or surety bond or other proof of financial responsibility. The duration of future proof of financial responsibility is one year, but on the second occasion on which a person is required to file such proof, it must be maintained for a three-year period. Section 15 (Ga. Code Ann. § 92A-615.1).

It is evident from an examination of the entire Act, as amended, that its purpose is to induce persons to secure the compensation of the public for accidents for which the motorist is responsible. This is accomplished by requiring him to show proof of financial responsibility when he is involved in an accident. To wait until a judgment is rendered may well render the act useless, for a motorist who is not financially responsible would then be in no worse position than any other judgment debtor except that he would lose his driving privileges if he failed to pay. This would be of little assistance to the members of the public injured or damaged, who would not be compensated despite pursuance of their claims through the judicial processes of suit. That Georgia's method has proved more effective is evidenced by the trial and discarding of other methods, as shown by the history of the Act.

D. THE MOTOR VEHICLE RESPONSIBILITY LAW IS A LEGITIMATE EXERCISE OF THE STATE POLICE POWER.

The statute, portions of which are here being attacked, is an effort by the State to regulate the movement of motor vehicles upon its highways. The driver's license is required for operating a motor vehicle upon the public roads or highways in the State. Ga. Laws 1937, pp. 322, 341, as amended (Ga. Code Ann. § 92A-9901). To obtain a license, a test demonstrating fitness and knowledge of motor vehicle regulations must be passed. *Ibid* (Ga. Code Ann. § 92A-401). The purpose of the provision for registering vehicles and obtaining license plates is stated as "being the better and more complete enforcement of the motor vehicle law, . . ." Code of Georgia of 1933, § 68-201, as amended (Ga. Code Ann. § 68-201). This section, then, affords a system of identification and proof of ownership. Georgia regards licenses thusly:

> "Where, in the exercise of the police power, a license is issued, the same is not a contract but only a permission to enjoy the privilege for the time specified, on the terms stated. It may be abrogated." Code of Georgia of 1933, § 20-117 (Ga. Code Ann. § 20-117).

This Court long ago had occasion to examine the nature of such motor-vehicle regulation in *Hendrick v. Maryland,* 235 U.S. 610 (1915). Recognizing even at that early date both the danger and cost to the public which attends the movement of motor vehicles over the highways, the Court said:

> "In the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order and respect to the operation upon its highways of all motor vehicles,—those moving in interstate commerce as well as others. . . . This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens; . . . ." 235 U.S. at 622.

The power of the state to regulate the use of motor vehicles including reasonable provisions to insure safety was also commented on in *Kane v. New Jersey*, 242 U.S. 160 (1916).

Not only may the state regulate usage of its highways by making licensing a prerequisite, but in further regulation, the license "may be abrogated". Code of Georgia of 1933, § 20-117, *supra*. This is done not only by requiring periodic renewal of the various licenses, but also by subjecting continued use of the license to obedience to the traffic laws, to the inspection laws, and to the implied-consent law, as well as to the safety responsibility law here subject. Safety, of course, is one of the objects of such legislation. As stated in *Hess v. Pawloski*, 274 U.S. 352 (1927):

> "Motor vehicles are dangerous machines; and, even when skilfully and carefully operated, their use is attended by serious danger to persons and property. In the public interest the state may make and enforce regulation reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways." 274 U.S. at 356.

Safety is not only the object which may validly be pro-

moted by the exercise of a state's police power, however. The state may also, in the exercise of the police power, exact a tax for the privilege for using its highways. *Bode v. Barrett,* 344 U.S. 583 (1953). But a state's police power is even broader. A state has the power and is under a duty to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents. *Thornhill v. Alabama,* 310 U.S. 88 (1945). Or as recognized more recently in *City of El Paso v. Simmons,* 379 U.S. 497, *reh. den.* 380 U.S. 926 (1965), the state legislature has wide discretion in determining what is and what is not necessary in the exercise of the police power to protect the general welfare. It is an exercise of the sovereign rights of government to protect the general welfare of the people. *East New York Savings Banks v. Hahn,* 326 U.S. 230 (1945).

Of course, police power is not an unrestricted grant to the states. It connotes a limitation of public encroachment on private interests. *Goldblatt v. Town of Hempstead, New York,* 369 U.S. 590 (1962). It is subject to specific constitutional limitations, but as was described in *Berman v. Parker,* 348 U.S. 26 (1954), when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. Each case involving the constitutionality of an exercise of the police power by a state must turn on its own facts. *Berman v. Parker, supra.*

In the instant situation, the State is attempting to balance the interests of citizens who responsibly retain insurance which pays those injured and of citizens who are injured or damaged on the highways, with the

interest of those who would rather take the risk of accident and not pay for insurance.

Requiring insurance as a condition of licensing would be a proper exercise of the police power. In *Continental Baking Co. v. Woodring*, 286 U.S. 352 (1932), a state statute requiring private motor carriers to obtain a license, pay a tax and file a liability insurance policy, was upheld. The Court recognized that:

> "The insurance policy is to protect the interests of the public by securing compensation of injuries to persons and property from negligent operations of the carriers. . . . Requirements of this sort are clearly within the authority of the State which may demand compensation for the special facilities it has provided and (reasonably) regulate the use of its highways to promote the public safety." 286 US. at 365.

This case was cited in *Ex parte Poresky*, 290 U.S. 30 (1933), to substantiate the proposition that the question of whether a state statute requiring compulsory automobile insurance violated the Fourteenth Amendment, was no longer open to debate. The judgment of the lower court, ruling that a three-judge court was not required because the question was not substantial, was affirmed by this Court,

> "In view of the decisions of this Court bearing upon the constitutional authority of the State, acting in the interest of public safety, to enact the statute assailed." 290 U.S. at 32.

Thus, requiring liability insurance as a condition of licensing was found not violative of the due process clause of the United States Constitution. The proposi-

tion was repeated in *Kesler v. Department of Public Safety*, 369 U.S. 153 (1962), overruled only with respect to a three-judge doctrine contained therein, *Swift and Co. v. Wickham*, 382 U.S. 111 (1965).

Requiring insurance as a condition of licensing is at one end of the scale of the financial responsibility schemes. Requiring only payment of judgments actually rendered for damages caused by the licensee, in order to avoid suspension, is at the other end of the scale. This Court upheld the latter method against a challenge that it violated Fourteenth Amendment due process, in *Reitz v. Mealey*, 314 U.S. 33 (1941). There the Court said:

> "Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. Some states require insurance or the equivalent as the condition of issuance of a license. New York chose to obtain the same end by providing for the revocation or suspension of a license of the holder who is adjudged guilty of negligent driving." 314 U.S. at 36.

Georgia has chosen a middle ground, after experimenting with suspension only after judgment. As has been shown, the Georgia law provides that the event triggering requirement for proof of financial responsibility is involvement in an accident in which someone makes a claim for damages. Only then need the Georgia motorist show he is responsible for injury or property damage which may have been or may be caused by him. It is a delayed condition, designed not to prevent persons from obtaining licenses, but only to warn them that they must bear the risk of responsibility for their actions. That

it is a condition is not subject to debate. As the Georgia Supreme Court clearly stated in *Turmon v. Department of Public Safety*, supra:

> ". . . No one is privileged to operate a motor vehicle upon the public roads without complying with the conditions prescribed by law. It is too late to protect the innocent victims of wrecks caused by such operators after the injury has been done and the licensee is wholly unprepared to pay damages caused by him. The 1951 Act points the way to get so prepared. And it attaches the penalty of withdrawing the license when the licensee is not prepared and is involved in a wreck. The law is wise, just and valid, and the Department of Public Safety deserves full support in its enforcement." 222 Ga. at 844.

Thus, the obligation to accept financial responsibility towards others on the highway actually arises upon licensing, but the proof of the acceptance of such an obligation is delayed until the happening of an event related to the need for the imposition of such an obligation. Georgia's law was upheld against the same attack made here, in two cases decided by three-judge courts: *Roberts v. Burson*, ... F.Supp. ..... No. 12588 (Northern District of Georgia, 1969), and *Chappell v. Department of Public Safety*, ... F.Supp. ..... (Northern District of Georgia, 1970), appeal docketed, United States Supreme Court, No. 6171, October Term, 1970.[1]

Petitioner complains that the Georgia statute does not serve a legitimate State interest because it results

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[1]Opinions appear as Appendices "D" and "E" of Respondent's Brief in Opposition to the Petition for Writ of Certiorari.

only in helping potential private creditors to collect debts owed. This is entirely too narrow an analysis of the broad reach of the Act. Not only does it require uninsured motorists involved in an accident wherein a claim is filed, to post security in the event another user of the highway is entitled to compensation for a past accident, but it requires the uninsured to exhibit proof of financial responsibility in the future. Thus, the members of the general public are protected from uncompensated damages. Also, by removing from the highways, at least for a limited period of time, those persons who fail to show proof of financial responsibility, the State conclusively prevents the occurrence of some uncompensable injuries and damages.

The limited view which Petitioner takes of the statute's effect was not shared by the Georgia General Assembly in stating the purposes of the Act, nor did the Georgia Supreme Court find its purpose so small. The latter recognized, following an examination of the Act in *Murphy v. Dominy*, 211 Ga. 70, 73, 84 S.E.2d 193 (1954):

> ". . . The Motor Vehicle Responsibility Law has for its purpose requiring the qualification of the licensee as a self-insurer, or the giving of a liability policy, or a surety bond, for the protection of the public from any loss or damage during a period of three years . . . (I)t deals with the revocation of a privilege, . . ." 211 Ga. at 73.

The requirements also apply to those convicted of certain moving violations. Section 7-A (Ga. Code Ann. § 92A-608).

The connection between financial responsibility and safe driving was also apparent to this Court. Following a long documentation of the history of the state safety responsibility laws, in which the distinctions between them was described and the development of various types of such laws was reviewed, the Court commented that:

> "A State may properly decide, as 45 have done, that the prospect of a judgment that must be paid in order to regain driving privileges serves a substantial deterent to unsafe driving. *Kesler v. Department of Public Safety, supra,* 369 U.S. at 173.

Cognizance of the rationality of this proposition extends also to Georgia's efforts to curtail reckless and irresponsible driving by requiring security and financial responsibility after an accident in which claims are made. The potential judgment debtor, having been in an accident, is no less immune from a desire to avoid suspension and repeated experiences of the same than is the debtor who already has a judgment against him. It is notable that the Court recognized in its study that Georgia's law required security after accidents and proof after certain violations. *Kesler v. Department of Public Safety, supra,* 369 U.S. at 165, n.29. Also, in referring to the statute discussed in *Reitz v. Mealey, supra,* which statute provided that suspension should not occur until there was an unsatisfied judgment, the Court regarded it as one not designed to aid the collection of debts but to enforce a policy against irresponsible driving. *Kesler v. Department of Public Safety, supra,* 369 U.S. at 169. Thus, Bell's argument, that the only purpose is to assist private creditors and that this is impermissible, does not bear up under scrutiny.

Moreover, the result he finds objectionable would certainly constitute one of the results were Georgia to have compulsory insurance, and yet he finds no constitutional limitations on such a scheme.

E. REQUIRING FINANCIAL RESPONSIBILITY PROOF AFTER ACCIDENT INVOLVEMENT DOES NOT CONSTITUTE A DENIAL OF DUE PROCESS.

Whether the licenses here involved are regarded as property or limitations on liberty or rights or privileges, they are not absolute and, as has been shown, the State may reasonably regulate the use of them. The question as to due process is not whether it is a right or privilege or liberty. Georgia itself recognizes that the right to drive a motor vehicle and the right to obtain a license to do so is a "civil right." *Nelson v. State,* 87 Ga. App. 644, 75 S.E.2d 39 (1953). But as correctly noted in *Nelson,* the right is regulated by legislation, and every person is entitled to it if he meets the requirements and qualifications of the law. The Fourteenth Amendment prohibits states from depriving "any person of life, liberty, or property, without due process of law." Constitution of the United States, Amendment XIV. The test to measure the validity of a state statute under the due process clause of the Fourteenth Amendment is whether the statute is contrary to fundamental principles of liberty and justice. *Re Groban,* 352 U.S. 330 (1957). Due process has to do with the denial of fundamental fairness shocking to the universal sense of justice; it deals neither with power nor jurisdiction, but with mere exercise. *Kinsella v. United States,* 361 U.S.

234 (1960). Even rights are subject to proper regulations. In the judicial application of the due process clause, a balancing of relevant and conflicting factors is a necessary process. *Bartkus v. Illinois*, 359 U.S. 121 (1959). In the context of deprivation of liberty, due process does not prohibit all inhibition of liberty. *Zemel v. Rusk*, 381 U.S. 1 (1965). Application of the broad restraints of due process compels inquiry into the nature of the demand being made upon individual freedom in a particular context and the justification of social need on which the demand rests. *Frank v. Maryland*, 359 U.S. 360 (1959).

It is submitted first of all, that the Georgia statute regulating traffic on its highways does not abridge the right of interstate travel. The State sought to prohibit Bell from using his motor vehicle in Georgia or operating another vehicle because of his refusal to exhibit financial responsibility. This is a far cry from violating the rights of Bell as a citizen of the United States to pass into and through the State. As to such argument, the Court in *Hendrick v. Maryland, supra*, gave short shrift:

> "There is no solid foundation for the claim that the statute directly interferes with the rights of citizens of the United States to pass through the State; . . . Here the State at most attempts to regulate the operation of dangerous machines on the highways, and to charge for the use of valuable facilities." 235 U.S. at 624.

Petitioner argues that *Agee v. Kansas Highway Cmr. Motor Vehicle Department*, 198 Kan. 173, 422 P.2d 949 (1967), and other state cases are premised on the "right-privilege" distinction, and that it has been laid

to rest in *Shapiro v. Thompson*, 394 U.S. 618 (1969). But the right of citizens to travel interstate, or to travel freely intrastate for that matter, has little to do with regulating a person's operation of a dangerous vehicle on the public highways. His right to move his person where he wills is not restricted at all. His *method* of movement, that is, by his own automobile or by his operating another's automobile, is what is regulated. This is the legitimate exercise of the police power. The fact that his freedom is incidentally curtailed by the State's exercise of its police power in suspending a license does not constitute an unpermitted abridgment on his right to travel. It must be remembered that he brought the suspension upon himself. The right to travel freely, and the right to exercise the privileges of operating one's motor vehicle on the highways, should not be confused.

Secondly, the State has not attempted to suspend Bell's license without due process. A hearing on whether he complied with the requirements of the law was held prior to the suspension date, and the judicial review also preceded suspension. The alternatives were up to Bell. He could have avoided the suspension of his license. The fact that fault was not considered by the Department does not deprive Bell of due process. The finding of fault is a judicial obligation. Requiring the administrative agency to first find fault may be a violation of the constitutional prohibition against separation of powers. Constitution of the State of Georgia of 1945, Art. I, Sec. I, Par. XXIII. (Ga. Code Ann. § 2-123).

Moreover, the legislature has not seen fit to impose upon the administrative agency the complicated, costly, and time-consuming duty of establishing culpability be-

fore effecting a suspension. It deemed it best not to require the Department to interfere with a judicial function. The result does not violate Bell's constitutional rights. Petitioner argues that a finding of "potential culpability" or "reasonable possibility of a judgment" would be sufficient to meet due process requirements. Georgia's procedure, upon analysis, meets just such a criterion. The State provides that suspension may be avoided by obtaining settlement or release, as one avenue for avoidance of suspension if a licensee chooses to travel about uninsured. Thus, the fact itself that he cannot obtain a release indicates a reasonable possibility of suit against him, if not judgment. It is undisputed that Petitioner was involved in an accident, that he was not insured at the time, that there was injury or damage, that the other persons involved filed a claim against him swearing belief in entitlement to recovery, that he has not obtained a release; these all add up to "potential culpability" or "reasonable possibility of judgment." Thus, the State is not taking the motor vehicle licenses without due process. It is simply requiring its motorists to be insured or to post security and proof of future financial responsibility if they choose to remain uninsured and risk involvement in an accident. The refusal to comply with any of the alternatives afforded results in the sanction of suspension, but the opportunities to avoid suspension are numerous.

F. AFTER CAREFUL CONSIDERATION OF THE ARGUMENT OF PETITIONER BY OTHER COURTS, IT HAS BEEN REJECTED.

The general question posed to this Court has been

dealt with by other courts in both the State[2] and Federal systems. In addition to the cases dealing with Georgia's law, other similar laws have been examined from the aspect of the same question and have been found in conformity with due process requirements. In *Perez v. Tynan,* 307 F.Supp. 1235, (D. Conn. 1969), the court dealt with this issue and others and, citing numerous state courts in support of its conclusion, held that:

> "Constitutional due process is not offended, merely because a security deposit may be ordered by the commissioner without first determining fault." 307 F.Supp. at 1240.

It included in its opinion a noteworthy discussion of the Arizona cases which Petitioner asserts Georgia should be required to follow. It points out that the Arizona courts were interpreting an ambiguous statute so that they turned on legislative intent and not constitutional requirements. The court also pointed out that "the scope of the hearing in Arizona has been sharply limited. *Burri v. Campbell,* 102 Ariz. 541, 434 P.2d 627 (1967)." 307 F.Supp. at 1240-1241.

Not only did the Arizona court limit its holding to a conception of the statute, but the same approach was taken in *Orr v. Superior Court,* 77 Cal. Rptr. 816, 454 P.2d 712 (1969). The Court ruled that the statute re-

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[2]The State cases are collected in 35 A.L.R.2d 1011, 1021, § 7, and Supplemental Annotation, Later Case Service for 32-39 (1969 Ed.) p. 408, § 7. See, for example, *Gillespie v. Department of Public Safety,* 259 S.W.2d 177, 152 Tex. 459 (1953), *cert. den.* 347 U.S. 933, and cases cited therein; *Ballow v. Reeves,* 238 S.W.2d 141 (1951); *Hughes v. Department of Public Safety,* 79 So.2d 129 (La. App. 1955); *Velletri v. Lussier,* 148 A.2d 360 (R.I. 1959).

quired the Department to make a determination of "reasonable possibility of judgment" before suspension, and it explicitly refrained from determining whether a statute that did not require a determination of fault, would be unconstitutional. A like stance was taken by the New Jersey Supreme Court in *Williams v. Sills*, 55 New Jersey 178, 260 A.2d 505 (1970). It adopted the California interpretation of the statute. Chief Justice Weintraub, in a concurring opinion, recognized that the decision was not made on constitutional grounds and said, with respect to the constitutional issue of due process:

> "It is compatible with due process to require security in advance of the accident, and of course without regard to a probability of future fault. If the Legislature may thus require security in advance of the occurrence, I see no difficulty, under either the due process clause or the equal protection clause, in the circumstance that the Legislature permitted all motorists to choose to post the security before or after the happening of the event. Thus viewed, a failure to provide for an inquiry as to liability with respect to the motorist who elected to post the security after an accident is not arbitrary or invidious. To the contrary, the statute deals with an even hand with all motorists, to achieve security, in advance of a determination as to fault." *Id.* at 509-510.

The case of *Cheek v. Washington*, 311 F.Supp. 965 (D. D.C. 1970), involved the claim that the District of Columbia statute violated due process because it did not provide for a prior hearing to determine culpability before suspension. The court refused to convene a three-judge court, being of the opinion that no substantial constitutional question was involved because the intent of

the procedure, which was to insure financial protection from the public, was "reasonable *vis a vis* the end sought to be attained." 311 F.Supp. at 966. The court did not rely on the bankruptcy case of *Lee v. England,* 206 F.Supp. 957 (D. D.C. 1962), but merely cited that case for a quotation from *Kesler v. Department of Public Safety, supra.*

The three-judge court in *Gaytan v. Cassidy,* 317 F.Supp. 46 (W.D. Tex. 1970), appeal docketed, Number 495, OT 1970, reviewed a number of state and federal decisions and adopted as "the prevailing and better view" that due process was not violated. Whether one considers a license to be a privilege or a property right, the court said:

> "In either case, while the licensee is entitled to the protection of the Fourteenth Amendment, he is also subject to reasonable regulations under the police power in the interest of the public safety and welfare." 317 F.Supp. at 49.

More recently, several other three-judge courts have found that suspension without a prior determination of fault is not a deprivation of due process. In *Trujillo and Montoya v. DeBaca, Comm. of Motor Vehicles,* filed in Albuquerque on December 23, 1970, (No. 8382, Civil), the United States District Court in New Mexico rejected the argument that *Goldberg v. Kelly,* 397 U.S. 254 (1970) and *Sniadach v. Family Finance Corporation,* 395 U.S. 337 (1969), required a different result. The court was of the opinion that there was no right so basic to the necessity of life that it, without more, compels the state to provide the hearing and prior determination of fault requested. Petitioner contends that those

two Supreme Court cases, and *Shapiro v. Thompson*, 394 U.S. 618 (1969), invalidate the decision in *Llamas v. Department of Transportation, Division of Motor Vehicles*, Civil No. 68-C-154, Eastern District of Wisconsin (1969) (Appendix A). But these decisions, as the New Mexico court recognized, involve different circumstances entirely, and the due process considerations do not require the same results here.

In *Latham v. Tynan*, ... F.2d ..... No. 34668 (2nd Cir. 1970), a three-judge court reviewed the question and found that due process was not wanting. It recognized that Connecticut could have conditioned licensing only upon compliance with some compulsory insurance requirement. The adoption of a modified form of protection, i.e., the requirement for financial responsibility only after involvement in an accident, was permissible.

CONCLUSION

Georgia is concerned with the injuries and damages occurring on its highways. Last year, according to the Annual Report of the Department of Public Safety for 1970, 1,803 persons were killed, 33,866 persons were injured, and an economic loss in the amount of $369,615,000 was caused by traffic accidents. The Department began process on 18,696 accident cases in which claims were filed under the motor vehicle responsibility law here attacked.

In an effort to induce drivers to avoid accidents for which they may be liable, and to secure compensation for those injured or damaged, the motor vehicle responsibility law is in operation. It embraces both safety

responsibility and financial responsibility. It is submitted that the procedure by which the State seeks to protect the general welfare in this regard does not violate the due process protections of the Fourteenth Amendment. The grant of a license carries with it the obligation to comply with the motor vehicle laws, and it is respectfully submitted that Georgia's statutory scheme as particularly challenged here, is valid.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

HAROLD N. HILL, JR.
Executive Assistant
Attorney General

COURTNEY WILDER STANTON
Assistant Attorney General

DOROTHY T. BEASLEY
Assistant Attorney General

APPENDIX A

(U. S. Dist. Court East of Wis. Filed Jan. 3, 1969 at.....o'clock.....M; Ruth W. LaFave, Clerk)

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF WISCONSIN

MARIA E. LLAMAS, individually, GEORGE GILMORE, individually, and VIRGINIA I. DUER, individually and on behalf of all others similarly situated, *Plaintiffs,* v. DEPARTMENT OF TRANSPORTATION, DIVISION OF MOTOR VEHICLES, and JAMES L. KARNS, Commissioner, *Defendants.*	Civil Action No. 68-C-154

Before DUFFY, Senior Circuit Judge, REYNOLDS and GORDON, District Judges.

DUFFY, Senior Circuit Judge. The complaint herein challenges the constitutionality of Sections 344.13 and 344.14 of the Wisconsin Statutes. The basis of the alleged invalidity is the claim that the state statutes deprive plaintiffs of due process and of equal protection of the law under the Fourteenth Amendment to the Federal Constitution. This statute is a portion of the Financial Responsibility Law of Wisconsin, although the plain-

tiffs, in their briefs, choose to designate it "The Past Security Law."

The three individuals who are plaintiffs herein have had their Wisconsin automobile drivers' licenses suspended because they were involved in accidents on Wisconsin highways. Plaintiffs claim that in each case there was no evidence in the police accident report to suggest that the accidents were caused in whole or in part by by the negligence of the plaintiff involved.

Pursuant to Section 344.13, Wisconsin Statutes, the Motor Vehicle commissioner of Wisconsin was required to determine with respect to each of the accidents "... the amount of security which is sufficient in his judgment to satisfy any judgment for damages resulting from such accident which may be recovered against each operator and owner of the vehicles involved in such accident. . . ."

Section 344.13(2) provides: "The commissioner shall determine the amount of security required to be deposited by each person on the basis of the accident reports or other information submitted." The statute also provides the determination of the amount of the security must be "without regard to the fault of the persons involved. . . ."

The statutes here involved do not apply to a motorist who is carrying automobile liability insurance at the time of the accident.

The amount of the security fixed for Maria E. Llamas was $620.00; for plaintiff George Gilmore, $3,300, and for plaintiff Virginia I. Duer, $1,765.00. There is no claim in this case that the amounts thus set were un-

reasonable or that the Motor Vehicle commissioner did other than follow the Wisconsin Statutes. However, each of the plaintiffs does claim that he or she was and is unable to provide the security and, as a result thereof, their respective operating privileges were suspended.

The claim of unconstitutionality of the statutes hereinbefore noted has been decided adversely to plaintiffs' contentions by the Supreme Court of Wisconsin in *State v. Stehlek* (1953), 262 Wis. 642, 56 N.W. 2d 514. Similar holdings have been made by state courts of last resort in practically all of the states where their safety liability statutes have been tested on constitutional grounds.[1]

We shall first consider plaintiffs' claim of failure of due process. In *Stehlek*, the Wisconsin Supreme Court cited and quoted from *Escobedo v. State of California*, 35 Cal.2d 870, 22 Pac. 2d 1: " 'Suspension of the license without prior hearing but subject to subsequent judicial review did not violate due process if reasonably justified by a compelling public interest.' " The "compelling public interest" as set forth in *Stehlek* was the practical impossibility of a hearing prior to suspension.

Under the Wisconsin statute here under attack, the commissioner requires that security be posted in an amount sufficient to cover potential damages. True, due process typically requires that a person potentially affected by government action should be granted an opportunity to be heard prior to any action being taken. However, there are many exceptions to such a requirement. There are many instances where the assets of a

[1]See 7 Am.Jur.2nd, Automobile and Highway Traffic, Sec. 138.

person may be seized prior to a determination of his liability such as in attachment and replevin proceedings.

Wisconsin does have a statutory provision for a hearing after the commissioner has acted. Section 344.03, Wisconsin Statutes, provides that any person aggrieved by any action of the commissioner pursuant to the provisions of Chapter 344 may, after ten days' notice, file a petition in the circuit court of Dane county for a review. That court is directed to summarily hear any such petition.[2]

In our view, the plaintiffs in this case were not deprived of due process of law by reason of the action of the commissioner in fixing the respective securities as hereinbefore described. We so hold.

The second question to be resolved is the claim of each of the plaintiffs that he or she, by the actions of the commissioner, was deprived of the equal protection of the laws. The statute singles out those uninsured motorists who have been involved in a collision in which damages resulted. The plaintiffs contend that this law unfairly discriminates against those uninsured drivers who are involved in an accident. Plaintiffs argue, in effect, that equal protection requires that somehow, among those who have had an accident, the negligent must be separated from the non-negligent.

Equal protection demands that the legislature estab-

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[2]However, the Wisconsin Supreme Court has interpreted this review to be very limited. The only questions open to such judicial review are the amount of the bond required or the availability of statutory exceptions; the issues of fault and potential liability for damages may not be considered. *Burke v. Commissioner*, 8 Wis.2d 620 (1959).

lish a reasonable and rational classification. *Morey v. Doud*, 354 U.S. 457, 465-66. "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose. . . ." *McLaughlin v. Florida*, 379 U.S. 184, 191.

It is obvious that those drivers who are involved in an accident are potentially liable for damages, distinguishing them from those drivers who have not been so involved. The real contention must be that the legislature has not gone far enough, that is, that the negligent must be separated from the non-negligent.

The legislature may well have considered the number of auto accidents which occur on Wisconsin highways each year and the large number of hearings that would be required to make such a determination. In many instances, such a hearing might necessarily assume the aspects of a trial on the question of negligence, and a hearing might extend over several days. The legislature had a right to consider that such hearings would not only be time-consuming, but that the cost thereof would be exceedingly large. Further, they may have thought it unwise to empower the commissioner to make such a determination without a hearing.

It is important to bear in mind that the legislature has some leeway. "The problems of government are practical ones and may justify, if they do not require, rough accomodations — illogical, it may be, and unscientific . . . what is best is not always discernible; the wisdom of any choice may be disputed or condemned." *Metropolis Theatre Co. v. Chicago*, 228 U.S. 61, 69-70. "The 'rough accomodations' made by government do not violate the Equal Protection Clause of the Fourteenth

Amendment unless the lines drawn are 'hostile or invidious' ". *Norvell v. Illinois,* 373 U.S. 420, 424. We hold that the statutes under consideration are neither hostile nor invidious.

Plaintiffs contend that the statute is invalid because the threat of suspension of driving rights has no relation to the purpose — obtaining the security. On the contrary, we think it oftentimes would be effective. Undoubtedly, the suspension of a motorist's license may result in financial damage to the motorist, but the legislature was entitled to weigh that result against the value of obtaining the security in many cases.

Plaintiffs argue the statute assumes that every uninsured motorist involved in an accident is liable for the resulting damage. This is not accurate, however. The statute assumes only that such a motorist *may* be liable.

Plaintiffs contend the requirement to post security discriminates against those who are unable to furnish such security. Ability to pay should not be confused with opportunity to pay.

We hold that the Wisconsin legislature made a reasonable classification in enacting the laws hereinbefore described, We further hold that none of the plaintiffs was thereby deprived of the equal protection of the laws.

We are not unmindful of the hardship that these statutes may have caused to the plaintiffs in this case. We approve the statement made by the Supreme Court of Michigan in *Larr v. Secretary of State,* 317 Mich. 12, 26 N.W.2d 872: "The Secretary of State has no authority to pass upon the question of negligence or freedom from negligence. He has no discretion, but is obliged to act

as the law provides. If the penalty is harsh as to innocent parties, the relief sought must come from the legislative branch of the government."

Judgment will be entered dismissing the complaint of the plaintiffs herein.

Dated this 3rd day of January, A.D., 1969.

F. RYAN DUFFY

U. S. Sr. Circuit Judge,
7th Circuit

JOHN W. REYNOLDS

U. S. District Judge,
Eastern District, Wisconsin,
7th Circuit

MYRON L. GORDON

U. S. District Judge,
Eastern District, Wisconsin,
7th Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day served true and correct copies of the foregoing Brief of Respondent, by mail, by depositing the same in a United States mail box, with first class postage prepaid, addressed to each of the following, who constitute all counsel of record:

HOWARD MOORE, JR.

ELIZABETH ROEDIGER RINDSKOPF

PETER E. RINDSKOPF

Suite 1154
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303 (3 copies)

WILLIAM H. TRAYLOR
551 Forrest Road, N.E.
Atlanta, Georgia 30312 (1 copy)

This.....day of March, 1971. All parties required to be served have been served.

/s/ HAROLD N. HILL, JR.

HAROLD N. HILL, JR.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BELL *v.* BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY

CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

No. 5586. Argued March 23, 1971—Decided May 24, 1971

Georgia's Motor Vehicle Safety Responsibility Act, which provides that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident shall be suspended unless he posts security for the amount of damages claimed by an aggrieved party and which excludes any consideration of fault or responsibility for the accident at a pre-suspension hearing *held* violative of procedural due process. Before Georgia, whose statutory scheme significantly involves the issue of liability, may deprive an individual of his license and registration, it must provide a procedure for determining the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident. Pp. 4–9.

121 Ga. App. 418, 174 S. E. 2d 235, reversed and remanded.

BRENNAN, J., delivered the opinion of the Court, in which DOUGLAS, HARLAN, STEWART, WHITE, and MARSHALL, JJ., joined. BURGER, C. J., and BLACK and BLACKMUN, JJ., concurred in the result.

SUPREME COURT OF THE UNITED STATES

No. 5586.—OCTOBER TERM, 1970

Paul J. Bell, Jr., Petitioner, *v.* R. H. Burson, Director, Georgia Department of Public Safety.	On Writ of Certiorari to the Court of Appeals of Georgia.

[May 24, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Georgia's Motor Vehicle Safety Responsibility Act provides that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident shall be suspended unless he posts security to cover the amount of damages claimed by aggrieved parties in reports of the accident.[1] The administrative hearing con-

[1] Motor Vehicle Safety Responsibility Act, Ga. Code Ann. §§ 92A-601 *et seq.* (1958). In pertinent part the Act provides that anyone involved in an accident must submit a report to the Director of Public Safety. Ga. Code Ann. § 92A-604 (Supp. 1970). Within 30 days of the receipt of the report the Director "shall suspend the license and all registration certificates and all registration plates of the operator and owner of any motor vehicle in any manner involved in the accident unless or until the operator or owner has previously furnished or immediately furnishes security, sufficient . . . to satisfy any judgments for damages or injuries resulting . . . and unless such operator or owner shall give proof of financial responsibility for the future as is required in section 92A-615.1. . . ." Ga. Code Ann. § 92A-605 (a) (Supp. 1970). Section 92A-615.1 (Supp. 1970) requires that "such proof must be maintained for a one year period." Section 92A-605 (a) works no suspension, however, (1) if the owner or operator had in effect at the time of the accident a liability insurance policy or other bond, Ga. Code Ann. § 92A-605 (c) (Supp.

ducted prior to the suspension excludes consideration of the motorist's fault or liability for the accident. The Georgia Court of Appeals rejected petitioner's contention that the State's statutory scheme, in failing before suspending the licenses to afford him a hearing on the question of his fault or liability, denied him due process in violation of the Fourteenth Amendment: the court held that " 'Fault' or 'innocence' are completely irrelevant factors." 121 Ga. App. 418, 420, 174 S. E. 2d 235, 236 (1970). The Georgia Supreme Court denied review. App., at 27. We granted certiorari. 400 U. S. 963 (1970). We reverse.

Petitioner is a clergyman whose ministry requires him to travel by car to cover three rural Georgian communities. On Sunday afternoon, November 24, 1968, petitioner was involved in an accident when five-year-old Sherry Capes rode her bicycle into the side of his automobile. The child's parents filed an accident report with the Director of the Georgia Department of Public Safety indicating that their daughter had suffered substantial injuries for which they claimed damages of $5,000. Petitioner was thereafter informed by the Director that unless he was covered by a liability insurance policy in effect at the time of the accident he must file a bond or cash security deposit of $5,000 or present a notorized release from liability, plus proof of future financial responsibil-

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1970); (2) if the owner or operator qualifies as a self-insurer, *ibid.*; (3) if only the owner or operator was injured, Ga. Code Ann. § 92A-606 (1958); (4) if the automobile was legally parked at the time of the accident, *ibid.*; (5) if as to an owner, the automobile was being operated without permission, *ibid.*; or (6) "[i]f, prior to the date that the Director would otherwise suspend license and registration ... there shall be filed with the Director evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments . . . ." *Ibid.*

ity,[2] or suffer the suspension of his driver's license and vehicle registration. App., at 9. Petitioner requested an administrative hearing before the Director asserting that he was not liable as the accident was unavoidable, and stating also that he would be severely handicapped in the performance of his ministerial duties by a suspension of his licenses. A hearing was scheduled but the Director informed petitioner that "[t]he only evidence that the Department can accept and consider is: (a) was the petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided; or (c) does petitioner come within any of the exceptions of the Law." App., at 11.[3] At the

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[2] Questions concerning the requirement of proof of future financial responsibility are not before us. The State's brief, at 4, states: "The one year period for proof of financial responsibility has now expired so [petitioner] would not be required to file such proof, even if the Court of Appeals decision were affirmed."

[3] Ga. Code Ann. § 92A-602 (1958) provides:

"The Director shall administer and enforce the provisions of this Chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Director under the provisions of this Chapter. Such hearing need not be a matter of record and the decision as rendered by the Director shall be final unless the aggrieved person shall desire an appeal, in which case he shall have the right to enter an appeal to the superior court of the county of his residence, by notice to the Director, in the same manner as appeals are entered from the court of ordinary, except that the appellant shall not be required to post any bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at term or in chambers or before a jury at the first term. The hearing on the appeal shall be de novo, however, such appeal shall not act as a supersedeas of any orders or acts of the Director, nor shall the appellant be allowed to operate or permit a motor vehicle to be operated in violation of any suspension or revocation by the Director, while such appeal is pending. A notice sent by registered mail shall be sufficient service on the Director that such appeal has been entered."

administrative hearing the Director rejected petitioner's proffer of evidence on liability, ascertained that petitioner was not within any of the statutory exceptions, and gave petitioner 30 days to comply with the security requirements or suffer suspension. Petitioner then exercised his statutory right to an appeal *de novo* in the Superior Court. Ga. Code Ann. § 92A–602 (1958). At that hearing, the court permitted petitioner to present his evidence on liability, and, although the claimants were neither parties nor witnesses, found petitioner free from fault. As a result, the Superior Court ordered "that the petitioner's driver's license not be suspended . . . [until] suit is filed against petitioner for the purpose of recovering damages for the injuries sustained by the child . . . ." App., at 15. This order was reversed by the Georgia Court of Appeals in overruling petitioner's constitutional contention.

If the statute barred the issuance of licenses to all motorists who did not carry liability insurance or who did not post security, the statute would not, under our cases, violate the Fourteenth Amendment. *Ex parte Poresky*, 290 U. S. 30 (1933); *Continental Baking Co.* v. *Woodring*, 286 U. S. 352 (1932); *Hess* v. *Pawloski*, 274 U. S. 352 (1927). It does not follow, however, that the Amendment also permits the Georgia statutory scheme merely because not all motorists, but rather only motorists involved in accidents, are required to post security under penalty of loss of the licenses. See *Shapiro* v. *Thompson*, 394 U. S. 618 (1969); *Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U. S. 583 (1926). Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Four-

teenth Amendment. *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337 (1969); *Goldberg* v. *Kelly*, 397 U. S. 254 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." *Sherbert* v. *Verner*, 374 U. S. 398 (1963) (disqualification for unemployment compensation); *Slochower* v. *Board of Higher Education*, 350 U. S. 551 (1956) (discharge from public employment); *Speiser* v. *Randall*, 357 U. S. 513 (1958) (denial of a tax exemption); *Goldberg* v. *Kelly*, *supra* (withdrawal of welfare benefits). See also *Londoner* v. *Denver*, 210 U. S. 373, 385–386 (1908); *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117 (1926); *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126 (1941).

We turn then to the nature of the procedural due process which must be afforded the licensee on the question of his fault or liability for the accident.[4] A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case. Thus, procedures adequate to determine a welfare claim may not suffice to try a felony charge. Compare *Goldberg* v. *Kelly*, 397 U. S., at 270–271, with *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process

[4] Petitioners stated at oral argument that while "it would be possible to raise [an equal protection argument] . . . we don't raise this point here." Tr. of Oral Arg., at 14.

will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee.

The State argues that the licensee's interest in avoiding the suspension of his licenses is outweighed by countervailing governmental interests and therefore that this procedural due process need not be afforded him. We disagree. In cases where there is no reasonable possibility of a judgment being rendered against a licensee, Georgia's interest in protecting a claimant from the possibility of an unrecoverable judgment is not, within the context of the State's fault-oriented scheme, a justification for denying the process due its citizens. Nor is additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. " 'While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process.' " *Goldberg* v. *Kelly*, 397 U. S., at 261, quoting *Kelly* v. *Wyman*, 294 F. Supp. 893, 901 (SDNY 1968).

The main thrust of Georgia's argument is that it need not provide a hearing on liability because fault and liability are irrelevant to the statutory scheme. We may assume that were this so, the prior administrative hearing presently provided by the State would be "appropriate to the nature of the case." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950). But "[i]n reviewing state action in this area . . . we look to substance, not to bare form, to determine whether constitutional minimums have been honored." *Willner* v. *Committee on Character*, 373 U. S. 96, 106–107 (1963) (concurring opinion). And looking to the operation of the State's statutory scheme, it is clear that liability, in

the sense of an ultimate judicial determination of responsibility, plays a crucial role in the Safety Responsibility Act. If prior to suspension there is a release from liability executed by the injured party, no suspension is worked by the Act. Ga. Code Ann. § 92A–606 (1958). The same is true if prior to suspension there is an adjudication of nonliability. *Ibid.* Even after suspension has been declared, a release from liability or an adjudication of nonliability will lift the suspension. Ga. Code Ann. § 92A–607 (Supp. 1970). Moreover, other of the Act's exceptions are developed around liability related concepts. Thus, we are not dealing here with a no-fault scheme. Since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing.

The hearing required by the Due Process Clause must be "meaningful," *Armstrong* v. *Manzo*, 380 U. S. 545, 552 (1965), and "appropriate to the nature of the case." *Mullane* v. *Central Hanover Bank & Trust Co.*, *supra*. It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard.

Finally, we reject Georgia's argument that if it must afford the licensee an inquiry into the question of liability, that determination, unlike the determination of the matters presently considered at the administrative hearing, need not be made prior to the suspension of the licenses. While "many controversies have raged about . . . the Due Process Clause," *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S., at 313, it is fundamental that ex-

cept in emergency situations (and this is not one)[5] due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" *before* the termination becomes effective. *Ibid. Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S., at 152–156 (1941); *Sniadach* v. *Family Finance Corp., supra; Goldberg* v. *Kelly, supra; Wisconsin* v. *Constantineau*, 400 U. S. 433 (1971).

We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitioner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident. We deem it inappropriate in this case to do more than lay down this requirement. The alternative methods of compliance are several. Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the *de novo* judicial proceedings in the Superior Court. Georgia may decide to withhold suspension until adjudication of an action for damages brought by the injured party. Indeed, Georgia may elect to abandon its present scheme completely and pursue one of the various alternatives in force in other States.[6] Finally, Georgia may reject all of the above and devise an entirely new regulatory scheme. The area of choice is wide: we hold only that the failure of the present Georgia scheme to afford the petitioner a prior hearing on liability of the

[5] See, *e. g., Fahey* v. *Mallonee*, 332 U. S. 245 (1947); *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U. S. 594 (1950).

[6] The various alternatives include compulsory insurance plans, public or joint public-private unsatisfied judgment funds, and assigned claims plans. See R. Keeton & J. O'Connell, After Cars Crash (1967).

nature we have defined denied him procedural due process in violation of the Fourteenth Amendment.

The judgment is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

THE CHIEF JUSTICE, MR. JUSTICE BLACK, and MR. JUSTICE BLACKMUN concur in the result.